

Shamong Township  
November 17, 2009

A regular meeting of the Land Use Board of the Township of Shamong was held on the above date at the Municipal Building.

Members present were:

Noni Bookbinder Bell	James Sweet
Charles Burgin	Gary Vinciguerra
Michael Moss	Kevin Wise
Martin Mozitis	

Also present were Peter C. Lange, Jr., Esq., Solicitor, Dan Guzzi, Engineer, and Janice L. Heinold, Esq., Acting Secretary.

The meeting was called to order by the Chairman, Mr. Vinceguerra, at 8:01 p.m.

The Acting Secretary stated that in accordance with the Open Public Meetings Law, notification of this meeting had been published in The Central Record and notification had also been sent to the Burlington County Times.

All joined in Pledge of Allegiance to the Flag.

A motion was made by Mr. Sweet, seconded by Mr. Moss, to approve the Minutes of the October 20, 2009 meeting. All approved, motion carried.

The Public Hearing and Official Action on a Proposed Open Space and Recreation Plan Element of the Township Master Plan was opened. Mr. Lange noted that the hearing had been properly advertised in the paper, and that neighboring municipalities had been notified by certified mail. Cheryl Bargailo of Taylor Design Group, Inc. presented a summary of the report and map prepared by Taylor Design Group, Inc. Ms. Bargailo explained that Taylor Design Group, Inc. had performed an inventory of the Township properties, prepared a needs analysis through their own research and also in light of a survey completed by participating Township residents, in identifying what properties would be suitable for the Green Acres pilot for purchase of land for open space and recreation, and would further the intent and purposes of the Master Plan. Ms. Bargailo explained that the list of properties was as broad as possible in order to not have to amend the plan in the future. In addition to identifying properties, the report also identified a desire by residents who responded to the survey for an indoor recreation facility for a basketball court.

Mr. Vinceguerra asked Ms. Bargailo to elucidate how the Green Acres funding would work, and Ms. Bargailo explained that it would differ per property, depending on what funding the property qualified for. Mr. Vinceguerra also asked Ms. Bargailo to touch on examples of

what seniors in the town who responded to the survey wanted. Ms. Bargailo stated that seniors would like a senior center and walking trails.

Mr. Mozitis stated that it appeared to him that there were two pieces of the project: property acquisition and an indoor recreation center. He asked Ms. Bargailo why no commercial properties were identified in the report for the recreation center, because if the Township purchased residential property for the recreation center, it would have to be rezoned. Ms. Bargailo noted that Taylor Design identified properties with potential for being the site of an indoor recreation center due to location on busy roads and/or remediation purposes (to clean up a lot). Mr. Shevelew noted that the catch-all provision in Paragraph 22 on Page 20 of the report would include commercial properties that are vacant. Mr. Moss commented that it was the responsibility of the Land Use Board to provide a list of potential properties for the Township Committee. Mr. Lange agreed that it was a framework for implementation of an Open Space and Recreational Plan, that contained a catch-all provision in Paragraph 22 which provided flexibility. Mr. Lange then agreed with Mr. Moss that since there were un- or under-utilized commercial properties in the Township, and asked Ms. Bargailo if they should also be identified and included on the potential acquisition list. Ms. Bargailo stated that she could add “under-utilized commercial lots” to the catch-all provision.

Mr. Mozitis stated that he thought there should be more of a focus on commercial properties for an indoor recreation center. Mr. Shevelew noted that the Township should be looking to protect residential properties from residential development rather than focusing on commercial properties and removing a potential ratable that would not be using the Township’s resources like new residences do. Ms. Bargailo suggested adding to Page 14, where the report discusses the indoor recreation center, a statement that the location of the recreation center should be sensitive to surrounding residences. Mr. Moss stated for the record that it was important to note that the Township is not looking at any plans for an indoor recreation center right now. Mr. Vinceguerra asked Ms. Bargailo if the State would fund any of an indoor recreation facility. Ms. Bargailo noted that the report did not provide any exact numbers of funding, but suggested a private/public partnership in constructing an indoor recreation facility.

Ms. Bargailo asked what had been decided about the commercial properties. Mr. Mozitis said that he would hate to preclude any reasonable commercial properties that become available. Mr. Lange suggested a compromise, to all “potentially under-utilized commercial lots” to the catch-all provision of Paragraph 22. Mr. Mozitis said another concern was that a majority of the lots identified in the report were farms. He said it takes a lot of money to purchase farms, and once they are given to the State, the Township would never be able to touch them again, and the State cannot handle the public lands they already have in the Township—they let historic buildings burn and fall down. Ms. Bargailo reiterated that the purpose of the plan was not to put farmers out of business, that farmers were not targeted by the plan. Mr. Shevelew advised Mr. Mozitis to read the report, as what Mr. Mozitis was concerned about was not contained in the document. Rather, a sentence on Page 17 specifically stated that the Township would not go after properties unless the seller was willing to sell to the Township. Mr. Mozitis said it appears the Township will be working with the State to increase State holdings in the Township. Mr. Shevelew replied that he had already been approached by three farmers interested in selling to the Township. Mr. Lange noted that pursuant to Page 17 of the report, it was clear that it was not the intention of the Township to acquire property from unwilling land owners, that the process was

completely voluntary and the Township would not be condemning land for State use. Ms. Bargailo stated that the farms included on the inventory list were included to give farmers an option, should they want to sell their property in the future. Mr. Shevelew stated that if Mr. Mozitis had a problem with eminent domain, his problem was with the State, not the Township. Mr. Mozitis expressed his opinion that including properties on the inventory list made it easier for the Township to purchase them. Mr. Lange stated that Mr. Mozitis' concern seemed to be that inclusion of a property on the inventory list would lead to a taking, but that was not the case. He explained that planning vs. eminent domain were two different issues, and that this plan did not provide for eminent domain. He noted that normally, farmers *want* to be included on the list to give them flexibility for the future, and read the second paragraph on Page 17 aloud again.

Mr. Vinceguerra then opened the hearing to the public.

Mr. Steve Cantwell of 45 Oriental Road asked why we needed to add open space in the Township. Mr. Shevelew explained that it had to do with reimbursement from the State. If 60% of the Township was open space, the Township would get a lot more funds from the State, and be able to keep the Local Purpose Tax down. Currently, 2 cents per acre was imposed in the Local Purpose Tax for Green Acres Funds. Mr. Cantwell asked if Green Acres funding had to be paid back to the State, and Mr. Shevelew replied that it did not. Mr. Cantwell asked how much money was in the Township Green Acres fund, and Mr. Shevelew answered that there was \$200,000, and it was bondable. Mr. Cantwell asked how much land was actually left in the Township for residential development. Mr. Moss answered that a feasibility study had previously been completed, and the amount of developable land was provided in that public record. Mr. Cantwell stated that he thought it was a waste to spend money on buying land that couldn't even be developed. Mr. Shevelew noted that this plan was the difference between no increase in the local purpose tax or a 6 cents per acre increase, if the Township did not move in this direction. Mr. Cantwell responded that his property was on the list, and he was concerned. Mr. Shevelew replied that this was a comprehensive list of properties that met criteria for Green Acres, not a target list.

Ms. Robin Miller of 216 Stokes Road expressed concern that her property was also on the list. Mrs. Nancy Miller of 216 Stokes Road expressed her concern that 203 acres of the land in pink on the map belonged to her, and if seniors wanted walking trails, there was 17,000 acres of State land on the Township they could already walk on.

Ms. Roberta Russell of 282 Stokes Road asked how many people had participated in the survey, because no one she had spoke to had. Ms. Bargailo stated that 11% of the Township did. Ms. Russell expressed concern that the future of the Township was being decided by 11% of the Township. Mr. Shevelew stated that the survey had been on the back of the Township's newsletter that got mailed out. Ms. Russell said that she did not remember seeing it. She also said wasn't Oak Shade Road all zoned commercially? And if this Board only made recommendations to the Township Committee regarding properties to purchase, why were there surveyor's stakes in the property adjacent to hers, and that she had been told it was for the new indoor recreation center. The Board members stated that they did not know anything about an indoor recreation center being built.

Ms. Laura King of 903 Atsion Road commented that all the money coming from Green Acres funding is also coming from taxpayers. Mr. Shevelew stated that she was absolutely right, but the reality is that if the Green Acres funds do not come to us, they go to another Township.

The money is going to be spent one way or the other. Ms. King then asked whether a feasibility study had been done regarding the cost of getting the Township to the percentage required to increase reimbursement from the State. Mr. Shevelew stated yes, a cost analysis done provided that it would take 7 years to get all of the Township's money back, if the Township can double its Green Acres funding. If it could not, then Local Purpose taxes would rise 600%. Ms. King asked whether it was the Township's priority to acquire property for the State or for Township recreation. Mr. Shevelew responded that the Township did not have a priority; this was a plan that had to be put in place in order to obtain Green Acres funding in the future.

Mr. Steve Miller of 433 Atsion Road asked whether it was true that when a plan was in place, that it would make a property on that list easier to be taken by the Township. Mr. Lange repeated that no properties would be taken from land owners unwilling to sell to the Township. Mr. Shevelew noted that the Open Space Plan required every property that met certain criteria to be included on the list of potential property for acquisition. Mr. Miller replied that he was already suffering negative consequences due to his property being included on the list, but did not explain what they were.

Ms. Robin Miller of 216 Stokes Road asked why the farmland behind the Municipal Building was not included on the list of potential properties. Ms. Bargailo asked Ms. Miller to identify on the map what property she was asking about. Once identified, it was confirmed that although not in pink on the map, that farmland was included on the list of potential properties for acquisition.

Ms. Beth Cantwell of 45 Oriental Road said she was curious as to why her property was in pink on the map. She did not want her property to be taken, and did not want it included in on the list of potential properties for acquisition. Mr. Shevelew stated that he did not have a problem with taking her property off the list. Ms. Bargailo countered that the Plan needed to be as inclusive as possible for flexibility, and reiterated that there would not be any "taking" of property.

Ms. Dawn Abrams of 627 Atsion Road asked Ms. Bargailo how many people wanted an indoor basketball court, because none of her 10 children wanted one. Also, she wanted the report to be corrected that a parcel of her property identified was farmed for carrots, not sod. She expressed her concern that she wanted her kids to be able to farm, and that it would kill her husband if their farm was taken.

Mr. Wise stated that he commended all the farmers in this Township, who made the Township what it is. However, the Township was at the second stage of this process. The Township Committee had already decided to participate in this plan. The Land Use Board's job was to either approve or disapprove of the report's suggestions. Ms. Abrams asked how much the Township had spent on the report, and was answered \$20,000. She expressed shock at that amount. Mr. Shevelew advised Ms. Abrams to come out to the Township Committee meeting, as they were considering whether to pass this by public referendum.

Ms. Leah Miller of 216 Stokes Road asked what percentage of properties in pink had to be sold to the Township in order for the Township to get a benefit from it. Mr. Shevelew said that the Township has had a list of properties for potential Green Acres acquisition for four years already, and their properties were already on the list. The people in charge at Green Acres said that was not good enough, that we had to do a plan by a licensed professional planner.

Mr. Cantwell said that he felt an 11% response on the survey was not enough, and that the

rest of the residents' input should be obtained. Mr. Lange said that 11% was actually a large sample, statistically speaking. Mr. Shevelew stated that most people who did not respond simply don't care about it. Mr. Cantwell disagreed.

Ms. Roberta Russell said that if the survey was couched in a certain way, many people would not respond. For example, if it asked about an indoor recreation center, she would not have responded because she did not want an indoor recreation center. However, if it was couched in a manner that suggested an impact on her property, she would have responded.

Mr. Vinceguerra stated that he lived in the Township, that his property was probably on the list also (Mr. Shevelew confirmed that it was), but he was very comfortable with this Plan, and that it was a required step in order to get funding.

Ms. Dawn Abrams asked whether if property was in farmland preservation, whether that could not be acquired by the Township. Ms. Bargailo replied that there was no need to purchase property that was already protected.

Ms. Michelle Foreman from Browns Mills stood to speak. She said she was here to tell the public attending the hearing that they had the right idea questioning the plan, that she was being pushed around in her Township due to the mega base. She wondered why the report could not use the words "will not purchase" rather than "it is the intention" of the Township not to acquire property from unwilling landowners. Ms. Bargailo stated that she believed that writing that the Township did not "intend" to acquire property from landowners unwilling to sell was the same as writing the Township "will not" acquire land from landowners unwilling to sell. Mr. Lange stated that he did not know how many times the Board had to say that the Township did not intend to acquire land from unwilling landowners. Ms. Foreman then recommended that the public present should get a lawyer.

Ms. Nancy Miller asked why the report could not say "will not" rather than "intends." Mr. Lange said it was because to say we're not going to acquire anyone's property that does not want to sell defeats the whole purpose of the exercise, which was to identify properties the Township could purchase which fit criteria for Green Acres funding.

Mr. John Abrams of 627 Atsion Road commented that imminent domain was not ruled out in the report.

There being no further comments from the public, Mr. Vinceguerra closed the public portion of the hearing.

Mr. Lange noted that two changes had been proposed: one on Page 20, Paragraph 22, to add "and potentially under-utilized commercial lots" in the catch-all provision; and the other on Page 17, to include "or actively farmed land, or land that is intended to be farmed in the future, except by willing landowners" to the provision regarding it not being the intention of the township to acquire property from landowners willing to sell. Ms. Bargailo said that she would also correct "sod" to "carrots" for Ms. Abrams.

Ms. Bookbinder-Bell asked whether the report was being amended to replace "not the intention of the Township" with "the Township will not" on page 17. Mr. Lange stated that no one from the Board had suggested that change. Ms. Bookbinder-Bell said that she was suggesting it. Mr. Mozitis joined in her suggestion. Mr. Lange asked Ms. Bargailo what the effect on the Plan would be, whether that would undermine the effect of the plan? Ms. Bargailo stated that she did not know, she would have to research it. However, it would change the plan to performing a function of the governing body, which was not the plan's purpose. Mr. Lange

questioned whether adding qualifiers undermined the plan, and Ms. Bargailo stated that it changed the inventory list from a guide to a political decision. Mr. Mozitis again expressed his concerns that inclusion on the list made a taking of the property easier. Mr. Shevelew asked Mr. Mozitis whether he wanted Green Acres funding or not. Because in order to get it, the Township has to have a plan in place. Mr. Lange stated that a “taking” of property due to inclusion on the list was a completely contrived fear. It was not going to happen.

Ms. Bargailo suggested that on Page 17, a different heading could be used: “potential acquisitions” could be changed to “potentially suitable for open space and recreation,” which should work, even though the Green Acres statute used the term “potential acquisitions.” Mr. Lange advised the Chairman that with those changes, a motion was needed. Mr. Burgin moved to approve of the Plan with the changes stated by Mr. Lange and Ms. Bargailo to pages 17 and 20. Mr. Moss seconded the motion. A roll call vote was taken: Mr. Mozitis voted no, Mr. Burgin voted yes, Mr. Sweet voted yes, Mr. Wise abstained as he had not been at last month’s meeting; Mr. Vinceguerra voted yes; Mr. Moss voted yes; Ms. Bookbinder-Bell voted no. Mr. Lange stated that the motion carried, and the Plan was adopted.

The next item addressed at the meeting was the Review of Introduced Ordinance 2009-06, Amending the Land Development Ordinance of the Township of Shamong to Create Chapter 110-20.1, Governing Expiration of Approvals. Mr. Lange gave a brief summary of the Ordinance, and explained that it had to do with putting expiration dates on approvals. The Members reviewed the Ordinance. Mr. Vinceguerra asked Mr. Lange if he had any concerns with the Ordinance, and Mr. Lange stated this seemed to be the way other Townships were going, putting expiration dates on approvals, even though extensions are routinely granted. Mr. Moss asked whether this would give the Board greater control over projects in the Township, and Mr. Lange responded yes. Mr. Lange advised the Board that their job was to decide whether the Ordinance was consistent with the Master Plan, otherwise known as a Section 28 (of the Municipal Land Use Law) referral. There being no more comments from the Board Members, Mr. Sweet moved that the Board make a Section 28 referral to the Township Committee regarding this Ordinance, seconded by Mr. Burgin. All were in favor, with none opposed and none abstaining. Motion carried.

The next item addressed at the meeting was the Hearing on a Conditional Use Application and Site Plan Application by Cricket Communications, Inc., for Block 30, Lot 2.01. Mr. Lange noted that he reviewed the notice sent by the applicant to the neighboring landowners and proof of publication of the hearing, and it was in order. Mr. Mozitis excused himself from consideration of the application because family members owned a neighboring property. Richard Lemanowicz, Esq. represented the Applicant. Brian Seidel, Professional Planner, and Michael Bollinger, Professional Engineer, were also present on behalf of the Applicant. He stated that the Applicant was seeking to add three antennas to an existing communications tower, and two equipment cabinets to the existing enclosed area at the base of the tower. Mr. Guzzi noted that submission waivers outlined in his October 7, 2009 report to the Board regarding this Application needed to be addressed. After listing the submission waivers, Mr. Lange asked whether there was a sufficient basis to waive these, because it was an existing tower? Mr. Guzzi said yes. Mr. Wise made a motion to grant the submission waivers as listed in Mr. Guzzi’s report, seconded by Mr.

Burgin. All members present were in favor, none opposed, none abstained. Motion carried. Mr. Lemanowicz then summarized what the testimony of Mr. Seidel and Mr. Bollinger would be: three antennas would be added to the tower, placed flush on the tower, and two cabinets would be added to the gated compound at the base of the tower. Four other communications companies already use the tower. The Tower is structurally able to support three more antennae. The applicant would comply with FCC regulations regarding exposure to radio frequency. The proposed use is within the purpose of the Master Plan and not detrimental to it. Mr. Lemanowicz entered several exhibits into the record, including a certificate of filing with the Pinelands Commission. Mr. Bollinger noted that he agreed with Mr. Lemanowicz's representations, with one correction: they would need three cabinets on the platform, not two. Mr. Lange asked if they had an RFI expert. Mr. Lemanowicz stated they did not, that an EMF compliance report would be submitted as one on the conditions to the approval. Mr. Seidel noted that he agreed with Mr. Lemanowicz's representations with Mr. Bollinger's amendment to three cabinets. Mr. Lange asked what the planning justification for the conditional use was. Mr. Seidel responded that it meet the utility structures ordinance, to make use of existing towers rather than build new ones. Mr. Lange asked if there would be any detriments to granting the approval. Mr. Seidel replied, "No." Mr. Burgin asked whether all three cabinets would fit in the existing compound. Mr. Bollinger replied, "Yes." Mr. Burgin asked why the antennas were being place flush rather than protruding, and Mr. Bollinger replied that they did need to protrude with only three antennas. Mr. Moss asked whether they could meet FCC requirements without putting antenna on this tower. Mr. Lemanowicz replied that they could not; this was the only tower in the area they could use. Mr. Guzzi then went over the items addressed in his October 7, 2009 report to the Board, noting that many of them had already been addressed in the testimony and Board's questions. Mr. Guzzi listed conditions to the approval, including submitting an EMF report, submitting a confirmation that any structural improvements needed to the Tower to support the additional antennas would be completed. The Applicant agreed to satisfy and comply with all the items listed by Mr. Guzzi in his October 7, 2009 report. Mr. Moss asked whether all three cabinets were drawn on the site plan map. Mr. Bollinger replied in the affirmative. Mr. Moss also indicated that on behalf of Ms. Bookbinder-Bell and himself, he was concerned that the site plan map noted the Township as being "Vincetown", not Shamong. This is not Vincetown, nor Vincentown, for that matter. The Applicant expressed regret at the error. Mr. Vinceguerra opened the hearing to the public. There being no comments from the public, the hearing was closed to the public. Mr. Wise moved to approve the application, seconded by Mr. Moss. A roll call vote was taken: Mr. Burgin voted yes, Mr. Sweet voted yes, Mr. Wise voted yes; Mr. Vinceguerra voted yes; Mr. Moss voted yes; Ms. Bookbinder-Bell voted yes. Mr. Mozitis did not participate . The motion carried, and the application with conditions was approved.

The Acting Secretary advised the Board of several pieces of correspondence. A dues notice was received from the NJ Planners Association, to be addressed by the Secretary upon his return. The Township had been copied on several certificates of filing with the Pinelands Commission. The Township was notified that a public hearing would be held regarding the septic field placement for the Valenzano Winery on December 9, 2009 at 10:00 at the Pinelands Commission. An application for a bulk variance had been received, and would be placed on the agenda of a future meeting. Copies of the NJ Planner were also distributed.

The Meeting was then opened to the public. The public present made no comments. The meeting was then closed to the public.

A motion to adjourn was made by Mr. Burgin, seconded by Mr. Sweet, at 10:36 p.m.

Janice L. Heinold, Esq.  
Acting Secretary