O2024-04

AN ORDINANCE OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY DELETING AND REPLACING CHAPTER 93, *OPEN SPACE,* OF THE CODE OF THE TOWN OF PHILLIPSBURG

WHEREAS, the Town of Phillipsburg created, pursuant to Ordinance 2018-14A, an Open Space Advisory Committee ("OSAC" or "Committee") to provide non-binding guidance to the Mayor and Town Council regarding the expenditure of open space revenue collected by the Town through its Open Space tax levy; and

WHEREAS, the OSAC has historically met sporadically at best and in recent years not at all; and

WHEREAS, as a result of the failure of the Committee to meet consistently, the required nonbinding guidance has not been provided to the Mayor and Town Council regarding the appropriate use of Open Space funds, guidance has not been provided regarding particular projects or parcels of land which should be targeted for Open Space purposes, and the Committee has generally failed to carry out its duties pursuant to Chapter 93; and

WHEREAS, Ordinance 2018-14A, among other deficiencies, did not provide a mechanism for addressing inactivity of the Committee and/or Committee or the Committee's failure to carry out its duties pursuant to Chapter 93; and

WHEREAS, additionally, due to the above-identified inactivity of the Committee, the Town's records regarding existing members and existing members' term expiration dates are incomplete; and

WHEREAS, this lack of certainty regarding expiration dates of members' terms serves only to add to the uncertainty of the Committee's standing and its ability to function in accordance with its charge pursuant to Chapter 93; and

WHEREAS, the Town Council believes that it is in the best interest of the Town of Phillipsburg to delete and replace Chapter 93 in its entirety and to reconstitute the Committee in accordance with the parameters established hereinbelow.

NOW THEREFORE BE IT ORDAINED by the Town Council, Town of Phillipsburg, County of Warren, State of New Jersey as follows:

SECTION 1. Chapter 93, *Open Space,* of the Code of the Town of the Phillipsburg, County of Warren and State of New Jersey is hereby deleted in its entirety and the current Open Space Advisory Committee is hereby dissolved with all Open Space Advisory Committee members' terms being vacated as of the effective date of this Ordinance. Upon second reading and final

adoption of this Ordinance, the Open Space Advisory Committee shall be reconstituted in accordance with the provisions of this Ordinance.

SECTION 2.

Chapter 93 of the Town Code of the Town of Phillipsburg entitled *"Open Space"*, is hereby created which shall read as follows:

93 OPEN SPACE

93-1 Establishment of Open Space Trust Fund

There is hereby established a reserve in the General Trust Fund which shall be noted and designated as the Open Space Trust Fund ("Trust Fund" hereinafter). A separate bank account shall be established and maintained entitled "Town of Phillipsburg Open Space Trust Account".

A. Funding

Beginning in 2018, a special tax rate shall be added to the total town tax rate in the amount not to exceed one ($0.02) cent per one hundred ($100.00) dollars of the annual assessment valuations and tax rate, the revenue from which shall be deposited in the Trust Fund. The Town may, in its discretion, deposit additional municipal monies into the Trust Fund, which deposits shall then be subject to all of the provisions governing the Trust Fund. The Trust Fund shall also be authorized to accept donations and testamentary bequests.

B. Purpose and Utilization of Funds

Pursuant to N.J.S.A. 40:12-15.7, the annual levy shall be used for the following purposes:

1. Maintenance of lands acquired for recreation and conservation;
2. Development of lands acquired for recreation and conservation;
3. Acquisition of lands for recreation and conservation;
4. Preservation of historic properties, structures, facilities, sites, areas, or objects, and the acquisition of such properties, structures, facilities, sites, areas, or objects;

The Council shall determine the appropriate amount to be allocated to each purpose after holding one or more hearings thereon.

C. Sale of Property

No real property or interest therein, acquired with funds from the Trust Fund shall be sold, conveyed, leased or otherwise disposed by the Town unless it is needed for another public use or otherwise furthers the purposes of the Trust. If such a sale, lease or conveyance is made, the Town shall be required to place the monies received into the Trust Fund as provided in NJSA 40:12-15.9.

93-2 Establishment of Open Space Advisory Committee

There is hereby established an Open Space Advisory Committee of the Town of Phillipsburg to review and recommend parcels of land and interests as well as capital improvements to Open Space therein that could benefit from the Open Space Funds for the public good.

A. Membership.

The Open Space Advisory Committee shall consist of ten **(10)** regular members and two (2) alternate member as follows:

One (1) member of the Phillipsburg Town Council. (Council Appt.)
Three (3) residents of the Town of Phillipsburg. (Council Appt.)
Three (3) property owners or residents of the Town of Phillipsburg. (Mayor Appt.)
One (1) representative of the Phillipsburg Historical Commission. (Mayor Appt.)
One (1) representative of the Phillipsburg Recreation Commission (Council Appt.)
The Town of Phillipsburg Business Administrator
Two (2) Alternate members (**1** Mayor, **I** Council Appointment)

B. Appointment

The citizens appointed by the Mayor and Town Council shall hold no other municipal office, position, employment in the municipal government or serve on any board that serves the municipal government with the exception of the specifically named committees and offices or those offices or committees successors listed in Section A.

A. The member of the Town Council appointed to the Open Space Committee shall have terms which shall correspond with the term of their respective elective offices .

B. The Business Administrator shall serve as a member of the Open Space Committee as long as he or she is employed by the Town in the capacity of Township Business Administrator.

C. One of the citizens of the Town appointed by the Mayor and Two appointed by the Town Council and so designated by the Mayor and Town Council at the time of appointment shall have a term of two years.

D. Two of the citizens of the Town appointed by the Mayor and one appointed by the Town Council and so designated by the Mayor and Town Council at the time of appointment shall have a teim of one year.

E. Appointments by the Phillipsburg Historical Commission and Phillipsburg Recreation Commission shall be for a term of two years.

C. Removal

The Committee can request (by majority vote at any lawfully conveyed meeting) that the Town Council remove a member or members for cause. Additionally, the Town Council, on its own, may initiate the removal process for cause. For purposes of this section, "for cause" shall mean, but not be limited to, the generally accepted instances of "for cause" conduct including, but not limited to:

1. Neglect of duty. incompetency or inefficiency.
2. Incapacity due to mental or physical disability.
3. Misuse or unauthorized use of authority.
4. Chronic or excessive absenteeism.
5. Failure to cooperate with members of the Committee to the detriment of the overall operation of the Committee. This shall not be construed to mean the voicing or advocating of a differing opinion; but rather, the willful refusal to participate in the operations of the Committee.
6. Lack of professional skill, discretion or attitude.

If so requested, the Town Council, by a majority vote, may remove a member of the Open Space Committee upon notice to the member(s) and an opportunity to be heard before the Council. If a request to be heard is made of the Council, the matter shall be conducted in closed session unless the affected member(s) request(s) that it be heard in open session. Requests for a hearing must be submitted in writing to the Municipal Clerk no later than forty-eight (48) hours prior to the Council meeting at which the matter is scheduled to be discussed. The Town Council shall render its decision regarding whether a member should be removed within thirty (30) days of the hearing (if requested). If no hearing is requested, the Town Council may act on the matter at the Council meeting but in no case will it delay by more than thirty (30) days the issuance of its decision. The decision of the Town Council shall be final.

D. Vacancies; Time to fill.

Any vacancy occurring on the Committee by virtue of the resignation/removal/death of a member shall be filled by Town in the manner set forth in 93-2(B), above. However, no vacancies whether arising before or after October 1 shall be filled after October **1** of the calendar year. Any such vacancy(ies) shall be filled in the first quarter of the next calendar year, or as soon as practicable thereafter.

93-3 Officers and Minutes.

The Open Space Advisory Committee shall annually select from among its regular members a chairperson to act as presiding officer and a vice chairperson to serve as presiding officer in the absence of the chair. The committee shall also designate from among its regular members a secretary whose function shall be to keep minutes of all meetings, showing the time, place, the members present, and the subjects considered. Copies of minutes shall be

sent to the Municipal Clerk promptly after each meeting. The Municipal Clerk shall make the minutes available to the public upon request.

93-4 Public Meetings.

The Open Space Advisory Committee shall hold public meetings, which public meetings shall be held in accordance with the Open Public Meetings Act, and the Committee shall give appropriate notice of said meetings. The Committee shall meet regularly on dates as determined by the members, but at least four times annually.

93-5 Duties and functions.

The Open Space Advisory Committee shall:

A. Study and determine the existence of open space properties within the town.

B. Make recommendations to the Town Council as to those properties which it has determined meet the criteria for possible acquisition, whether in fee, by easement, by means of development rights, or by other means. The Town Council shall review the report of the committee and make a determination as to the properties, if any, to be acquired.

C. Prepare an open space plan which shall be submitted to the Town Council on an annual basis; the plan shall contain an updated inventory of open space properties and shall include recommendations for the acquisition or preservation of certain lands within the Town.

D. Obtain and review accounting reports from the Town's Chief Finance Officer of the utilization and balance available in the Open Space Trust Fund.

E.Perform such other advisory duties as requested by the Town Council.

93-6. Budget.

The Town Council may, at its discretion, appropriate sufficient funding to assist the Open Space Advisory Committee in carrying out its duties and responsibilities.

93-7 Review of Open Space Trust Fund.

In the event that no property is acquired or financed or any capital improvements made under this chapter for a period of five (5) consecutive years, the Town Council shall conduct a review and issue a report with recommendations and conclusions concerning the continuation of the Open Space Trust Fund.

SECTION 3. **All** ordinances or parts of ordinances inconsistent herewith are repealed to the extent of such inconsistency.

SECTION 4. If any word, phrase, clause, section or provision of this ordinance shall be found by any court of competent jurisdiction to be unenforceable, illegal or unconstitutional, such word, phrase, clause, section or provision shall be severable from the balance of the ordinance and the remainder of the ordinance shall remain in full force and effect.

SECTION 5. This Ordinance shall take effect after adoption and publication thereof as provided by law.

NOTICE

NOTICE IS HEREBY GIVEN that at a regular meeting of the Town Council of the Town of Phillipsburg held on March 27, 2024 at the Phillipsburg Senior Center, 310 Firth Street, Phillipsburg, New Jersey, the foregoing Ordinance was presented and passed on second and final reading, after a public hearing thereon.

Matthew C. Hall,
MPA Acting
Municipal Clerk