

A-10



STATE OF NEW JERSEY

In the Matter of Robert Sparkes  
Township of West Milford

CSC DKT. NO. 2011-2974  
OAL DKT. NO. CSV 01333-11

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

ISSUED: OCTOBER 1, 2014      BW

The appeal of Robert Sparkes, GIS Mapping, Township of West Milford, removal effective February 20, 2009, on charges, was heard by Administrative Law Judge Leland S. McGee, who rendered his initial decision on September 16, 2014.

Subsequent to presenting the initial decision to the Civil Service Commission, the parties reached a settlement agreement indicating that they had settled to a resignation in good standings and back pay effective September 16, 2014.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on October 1, 2014, did not adopt the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision. Rather it acknowledged the settlement.

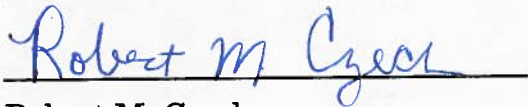
ORDER

The Civil Service Commission acknowledges the attached settlement.

Re: Robert Sparkes

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION  
OCTOBER 1, 2014

A handwritten signature in blue ink, reading "Robert M. Czech", is written over a horizontal line.

Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals and Regulatory Affairs  
P. O. Box 312  
Trenton, New Jersey 08625-0312

attachments



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSV 01333-11

AGENCY DKT. NO. 2011-2974

**IN THE MATTER OF ROBERT SPARKES,  
TOWNSHIP OF WEST MILFORD.**

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**Kathleen Fantacone Mazzouccolo, Esq., for Petitioner (Staff Attorney,  
AFSCME, attorneys)**

**David F. Corrigan, Esq., for Respondent (The Corrigan Law Firm, attorneys)**

Record Closed: September 4, 2013

Decided: January 23, 2014

**BEFORE LELAND S. MCGEE, ALJ:**

**STATEMENT OF THE CASE**

Petitioner, Robert Sparkes, appealed the decision of Respondent, Township of West Milford (Township or Respondent), to terminate him from the position of GIS Specialist effective February 20, 2009, on the grounds of 1) incompetency; inefficiency or failure to perform duties; 2) conduct unbecoming a public employee; 3) neglect of duty; and 4) other sufficient cause. Specifically, petitioner admitted to altering the ArcExplorer maps used by respondent's Health Department for two specific properties.

### **PROCEDURAL HISTORY**

On February 24, 2009, respondent issued and subsequently served a Preliminary Notice of Disciplinary Action upon petitioner, which terminated him effective February 20, 2009. On March 13, 2009, respondent issued and subsequently served an Amended Preliminary Notice of Disciplinary Action. On May 1, 2009, respondent issued a second Amended Preliminary Notice of Disciplinary Action. Following an internal hearing held on June 24, 2010, respondent issued a Final Notice of Disciplinary Action on January 3, 2011, which sustained all of the charges. The matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13 on February 4, 2011. A prehearing conference was held on March 11, 2011. A Prehearing Order was issued wherein a hearing was scheduled for June 16 and 17, 2011.

On April 18, 2011, respondent's counsel notified the court that the firm no longer represented respondent in this matter. Thereafter respondent requested time to secure new counsel and an adjournment of the scheduled hearing dates. On July 14, 2011, counsel for respondent filed a Substitution of Attorney. On July 25, 2011, a second prehearing conference was held and a Revised Prehearing Order was issued with a hearing scheduled for October 20 and 21, 2011.

On September 7, 2011, petitioner requested additional time to complete discovery with the consent of respondent. The hearing commenced on October 20, 2011, and the second day was adjourned until December 19, 2011, due to the unavailability of respondent's expert. On December 7, 2011, respondent requested an adjournment of the December date with the consent of petitioner, due to a Federal Court scheduling conflict. The hearing was scheduled for February 6, 2012; however, the parties made a joint request for an adjournment of the hearing due to "technical difficulties" with a video intended to be used at the hearing. The hearing was continued on March 14, 2012, and an additional date was scheduled for May 7, 2012.

Respondent requested an adjournment of the May 7 date with consent of petitioner due to a Superior Court scheduling conflict. The matter was scheduled for

June 27, 2012. On June 26, 2012, petitioner requested an adjournment of this matter, with the consent of respondent due to an illness. Petitioner subsequently provided a note confirming same. The final day of hearings was October 18, 2012, and the parties agreed that post-hearing briefs would be due forty-five days from receipt of transcripts.

On March 21, 2013, petitioner confirmed receipt of transcripts and the briefing schedule of May 6, 2013, and June 10, 2013 for reply briefs, which accommodated the parties' vacation schedules. On May 2, 2013, petitioner requested, with consent of respondent, an extension of time to file the initial briefs until June 10, 2013, with replies due on July 1, 2013. On May 29, 2013, petitioner requested, with consent of respondent, a further extension of time to file initial briefs to July 1, 2013, with replies due on July 22, 2013. On June 27, 2013, respondent requested, with consent of petitioner, an extension of time to file briefs until July 8, 2013. On July 1, 2013, petitioner requested, with consent of respondent, an extension of time to file initial briefs to July 22, 2013, with replies due on August 12, 2013. On August 6, 2013, petitioner requested, with consent of respondent, a final extension of time to file initial post-hearing briefs on August 23, 2013, with replies due on September 3, 2013. The record closed on September 4, 2013.

### **ISSUES**

1. Whether the documents that petitioner altered were "government documents"; and
2. Whether the alteration of the documents put the public's safety at great risk, put the applicant/homeowners at risk of violation of NJDEP regulations, or left respondent vulnerable to approving properties that need to be approved by the NJDEP or EPA.

## **FACTUAL DISCUSSION AND FINDINGS OF FACT**

### **SUMMARY OF TESTIMONY**

#### **(Petitioner)**

Petitioner Robert Henry Sparkes has been employed with the Township of West Milford (Township) as a geological information system (GIS) specialist from 1998 until February of 2009. As a GIS his duties entailed creating, collecting, and maintaining geographic data within various software packages. The software was then used to create maps and analyze different geographic questions. Petitioner testified as follows,

I received my GIS certification at Rutgers University and did various internships. I began working at the township during one of these internships. I worked within the planning department and completed projects for many different departments. Each project was different depending on the department. During the course of my employment, I used several versions of Arc View and Arc GIS. Arc Explorer is the basic free version of Arc that can be downloaded off the internet. Arc Explorer is very limited in capability and has a few software issues.

I began working with the health department when they learned that I had data for wetlands. They would ask me to print out maps when they went to on-site inspections. Because they came to my office frequently, I suggested installing the software on their computers and teaching them how to use it. I instructed the health department that the data in the Arc Explorer is not accurate, for example, wetlands less than one acre are eliminated from the map and there is an eighty-foot range of deviation. I told them it should only be used to assist in on-site inspections and not to be used for final determinations. I often witnessed the health department err in interpreting data.

The disclaimers contained in the metadata state that printed maps are not state-authorized documents. I did not know that the health department was using the maps on a regular basis. I did not change the underlying data of the maps when I changed the legend. I made this change because I heard that people in the health department were saying that

there were wetlands on properties that had no wetlands. I do not know how these people knew this information. I changed the legend to ensure that the health department made proper determinations based on site inspections and to remind them of the proper protocol. I was told to make the change by one of three individuals: William Drew, my supervisor, Tim Ligus, building inspection, or Jim Lupo, zoning officer. I did not remember during the meeting with the health department on October 9, 2008, because at least five months had passed. Additionally, I do not change the data on individual maps; I changed "wetlands" to "suspected wetlands" for the entire township.

The day after I made the change to the legends, I told Susan Muhaw and Eugene Taffera about the change. I also reminded them they should only be using Arc Explorer for on-site inspections. This was done very briefly, as I remember being very busy at the time. Muhaw and Taffera both said "okay" and I assumed they understood what I had changed.

With regard to the Mazzocchi property, I changed the legend from "wetlands" to "wetlands DEP" at the request of the health department. I cannot remember who exactly requested it or why. FEMA supplies information regarding flood plains on their website for public use. I would change data when better data became available publicly. I would look for new data periodically. To change data, I would need to change data for each department separately. Before I was terminated, I never heard of Jarvis or Mazzocchi.

On February 19, 2009 I was investigated by the Passaic County Prosecutor's Office. The prosecutors did not pursue any criminal charges against me. During the course of their investigation, the prosecutors questioned a Mr. Thornton, who is a GIS specialist with the NJDEP. During the interview he told the prosecutors that the GIS specialist uploads DEP information into the Arc Explorer, a program used to view such information. The State does not certify data imported into the Arc Explorer, because it is not "survey quality." The wetlands information NJDEP uses is from a 1986 wetlands survey. NJDEP generalized the data from the map by eliminating wetlands less than one acre and slivers less than a certain width from the survey. Mr. Thornton also stated the meta-data showed a disclaimer which expressly states that the DEP data was not to be used for regulatory purposes. This is why I advised the health department not to make maps. Mr. Thornton also expressed

that the flood hazard areas on the altered Mazzocchi map appeared relatively similar to earlier maps.

I was never told by anybody I needed to report changes back to NJDEP or FEMA. I was never told I was not permitted to shift property lines. During the updating of a parcel layer, property lines can shift. Maps of one area may be different within each department because they are utilizing the map for different reasons and may be using different layers of information. The last time I had access to Arc Explorer to make changes was on February 19, 2009.

According to the terms of agreement for NJDEP's meta-data of the wetlands, there is no guaranty of accuracy of the data. I gave this same instruction to the health department.

Regardless of any alterations made, the Jarvis property would still experience issues with wetlands due to the 300 foot buffer zone. I was under the impression that the health department made site inspections for wetlands.

On cross-examination, petitioner responded as follows,

At one point, on my own accord, I altered data from FEMA because I believed the FEMA data to be incorrect. I moved the Jarvis property lines sometime between the end of 2007 and January 2008. It takes months to complete that type of project. This resulted in wetlands no longer appearing on the Jarvis property. I changed the property lines because it is an attempt to improve the accuracy of the parcel layer. Every six to twelve months I would look at the tax assessor data and the parcel layer and reconcile the two databases. In the area of the Jarvis property, the parcel layers needed correcting, and when I made one correction it set off a "chain reaction" where I needed to correct multiple parcels.

I changed the legend from "wetlands" to "suspected wetlands" because someone from the health department approached me saying that there are wetlands labeled on properties without wetlands. Before changing the legend from "wetlands" to "suspected wetlands," I did not take steps to investigate the accuracy of the statement; and the individual in the health department did not discuss specific properties.

When I told Muhaw about the legend change I do not remember where we were. When I spoke to Taffera about



the change it was in passing, in a stairwell. No one else was present and I did not put it in writing.

During the October meeting with Taffera and Muhaw I was not shaking, nor did I ever say "They made me do it." I was upset because Wallace kept on asking me why I made the change in ArcExplorer, when we had already discussed the issue. I did not reference Mazzocchi's property in the October meeting. I never heard of a Mr. Mazzocchi at that point.

I altered the FEMA data because I thought it was inaccurate. No one told me the data was inaccurate. I did not tell anyone the data was inaccurate.

**(Petitioner's Expert Witness)**

James Girvan was employed as a municipal zoning officer, followed by fifteen years as a land use environmental planner and ten years as GIS Coordinator, both for Somerset County. He has a Bachelor of Science degree in environmental planning and design with a concentration in land use and environmental law. He has extensive training in geospatial technology and is nationally certified as a land use planner and GIS Professional. He also received a certification from Rutgers University in geomatics. James Girvan testified as follows,

I am actively engaged in performing parcel editing for twenty-one municipalities in Somerset County. I usually do this editing on an annual basis. There is a significant difference between the data on a map and the legend to that map. The legend is not data; the legend describes the data. If a technician determines that a user might misinterpret, misapply, or misuse the data because the "legend inaccurately defines what the data is, they would change the legend." I believe Petitioner appropriately changed the legend because people in the health department were using the map as a final determination of wetlands. Presence of wetlands must be verified, and some people were apparently claiming that pieces of land were incorrectly labeled as wetlands. NJDEP makes final determinations on the presence of wetlands.

It is not unusual to amend legends on maps. Petitioner had the authority and expertise to formally edit the legends and property lines on the maps in question. To my recollection

NJDEP wetlands data used for the map in question was from 1986 and has been updated at least twice since then. The last time it was updated was in 2007.

The NJDEP data used in the health department project can absolutely not be used for regulatory purposes. That is why a letter of interpretation of exemption must always come from NJDEP when there is a wetlands issue. When Petitioner made the changes in the maps he would not have changed the data, he would have only downloaded the latest data. None of the data downloaded by a GIS should be used for regulatory purposes. The only regulatory document is the hard copy Flood Insurance Rate Maps (FIRM).

Because the information in the iMap website can be different from NJDEP data, different versions of a map may have different legends.

On cross-examination, James Girvan responded as follows,

I often amend legends on my projects. I may have altered the legend of a map within the past couple of weeks. I may have altered the legend of a map regarding wetlands around 2002.

**(Petitioner's Expert Witness)**

Andrew Rowan has been employed within the GIS technology field for the past twenty-three years. During that time he has engaged in private consulting, working in universities, non-profits, and state government. For the past seven years he has been employed as Director of the New Jersey Office of GIS. He has a Bachelor of Science degree in geology and the geological sciences and a Ph.D. in environmental sciences. Andrew Rowan testified as follows,

There was no problem in Petitioner's change of the legend regarding wetlands. GIS professionals are not prohibited from making changes to a legend. Petitioner's change to "suspected wetlands" was actually the appropriate decision. The DEP website specifically states that to determine whether a piece of land has wetlands for regulatory purposes, a field visit is required. The maps used by the health department were used as guides rather than as a definitive answer as to the presence of wetlands. The GIS

community in New Jersey is large, and it is with this community that I discussed Petitioners' situation.

On cross-examination, Andrew Rowan responded as follows,

I previously knew of the case from the media and word of mouth, but had not talked with Petitioner until today. I reviewed only a summary before testifying, and have limited knowledge of the facts of the case.

**(Respondent's Witness)**

Susan A. Muhaw has been employed with the Township as a registered environmental health specialist (REHS) for approximately thirteen years. As a REHS her duties entail environmental inspection, including but not limited to: plan review; wake and bathing inspections; plan review for septic systems; and construction review of setback distance requirements under N.J.A.C. 7:9A. Susan A. Muhaw testified as follows,

As a REHS I am responsible for the environmental inspection aspects of the Township. I am also classified as a sanitary health inspector. I work within the Township's Health Department. The main part of my job is reviewing applications which contain septic systems and wells. I rely on N.J.A.C. 7:9A which sets the standards for individual subsurface sewage disposal systems. Specifically, a proposed septic system or well cannot be built on a freshwater wetland, wetland buffer area, flood zone, or flood hazard area. Additionally, the builder needs to show proof of a highlands exemption letter from the Township or NJDEP. I have reviewed hundreds of applications over the course of my employment.

The Township is approximately 89 square miles and contains multiple water courses including freshwater wetlands and flood zones. Different types of buffer zones are required for each type of land area. The buffer zones are areas around freshwater wetlands where no development is permitted and can vary anywhere from fifty feet to three hundred feet. Anything built in a buffer zone requires a permit from NJDEP. The township is also ninety-five percent on septic systems and potable wells for drinking water. This means the Township has no sanitary sewers.

The regulation of the Township's land use is extremely important because the Township is considered a highland by NJDEP. This means the water within the township flows to and is used by towns below, such as Newark and Jersey City.

My permit review process begins when I receive an application. I first pull out the local block and lot file and then proceed to use the ArcExplorer program. ArcExplorer is a computer program that the Health Department uses to determine if a particular piece of property contains fresh water wetlands, flood hazard areas, highlands, and/or buffer areas.

R-1 is my review of Mr. Jarvis's application for 384 Morristown Road. Jarvis submitted plans for a 2000 square foot pole barn with a required dry well. Using the ArcExplorer I found freshwater wetlands and a stream on the Jarvis property, although the proposed plans indicated no such water source. The health department has to warn the applicant they might be building on a protected area and Jarvis's building permit was denied. Additionally, the ArcExplorer is just a tool and not one hundred percent accurate.

In this instance, Jarvis would need to work with NJDEP to determine whether he could build on the property or not. Jarvis was agitated when the health department denied his application, because he had already been approved by the engineering department and the zoning department.

R-2 is an image from ArcExplorer of Jarvis's property, printed on March 31, 2008. It shows that Jarvis's property contains freshwater wetlands and a stream. R-4 is another image from ArcExplorer of Jarvis's property, printed on April 14, 2008. It is identical to R-2. R-5 is an image from ArcExplorer of Jarvis's property, printed on April 15, 2008. It is different from R-2 and R-4 because the key has been changed to read "suspected wetlands" instead of "wetlands." This change followed Jarvis coming into the health department to complain on April 15, 2008. On April 16, 2008 I noticed the change in ArcExplorer. Taffera, another REHS, and I reviewed the other department's maps and determined only the health department's map of Jarvis's property was altered. I was never informed by Petitioner that this change from "wetlands" to "suspected wetlands" was made.

Taffera, William Wallace, the health officer, and I sat with the Petitioner on October 30, 2008, to discuss why he changed the legend. Prior to this date, I never asked the Petitioner about making changes in ArcExplorer. During the meeting, the Petitioner was visibly upset, and started to shake, saying "they made me do it, they're always complaining about the wetlands." Petitioner named Drew as the person who possibly told him to make the change in ArcExplorer. Petitioner also claimed he changed Mr. Mazzocchi's property map in ArcExplorer. Mazzocchi's property was entirely covered by a flood zone, which was altered to indicate part of the property was no longer in a flood zone.

Regardless of the alterations, both Mazzocchi's and Jarvis's applications would have been denied by the health department because of other problems. In Mazzocchi's case, the health department had the ability to deny his application because he was building a house from scratch and needed to build a septic and a well. In Jarvis's case, the health department's opinion was merely a recommendation. The health department also approves an application subject to NJDEP's approval.

In terms of public health, there is no direct risk from the changes in ArcExplorer. The only danger is to the builder who may decide to build because they do not see a risk on the property.

Both the Petitioner and Ken Haskwell, the prior health officer, were adamant about the health department not using ArcExplorer because the software was being used incorrectly. They both claimed the health department was stagnating building in the Township. Additionally, we were told not to use the software as a survey because each application must be submitted with a survey completed by a licensed surveyor.

I cannot rely merely on the surveys submitted by the applicants though. A professional surveyor cannot give proof they are not building on wetlands. This statement can only come from NJDEP. This is why we must always check against ArcExplorer's maps.

On cross-examination, Susan A. Muhaw responded as follows,

I have been told ArcExplorer has been periodically updated but I cannot say for certain whether that has happened or not. The health department does not use firm maps when

reviewing applications. Only the Engineering department uses firm maps. The health department does not use ArcExplorer for regulatory purposes – the software is only used as a tool, with final determinations made by NJDEP.

Mazzocchi wished to construct a septic system and a building on the Mazzocchi property, while Jarvis only wished to construct a building on the Jarvis property. The health department would have made the same determination on the Jarvis property even if the legend stated "suspected wetlands" from the beginning. If the application indicates wetlands at all, the application must be forwarded to NJDEP for determination. For construction of a pole barn, the structure must be a certain distance away from potable wells and septic systems. It cannot be in a wetland or flood plain without the approval of DEP. The health department must inspect all properties where septic systems are being installed. ArcExplorer was never used to make a final determination in issuing a permit. The application for a permit must always come with a survey, a letter from the NJDEP or an on-site inspection.

I learned of the change a day after Petitioner made the change in ArcExplorer. To my knowledge, only the legend was changed, and not the map itself. For this property, Petitioner's alteration made no difference in the decision, though it could have been a big problem.

I never asked Petitioner why he changed the maps. He did state in our meeting that somebody told him not to use the term "wetlands" anymore and that person was not from NJDEP. I do not remember who told us to use ArcExplorer. I do not know who created ArcExplorer. I have never contacted NJDEP or been contacted by NJDEP about ArcExplorer. I was excited about the program because it gives the health department more validity when denying an application. The Petitioner trained the health department on using ArcExplorer. I never received a manual. Haskwell told the health department not to use ArcExplorer because it was not survey quality. The health department currently uses ArcExplorer. The other health inspector and myself have current lawsuits pending against the Township regarding wetlands determinations.

**(Respondent's Witness)**

William Wallace has been employed with the Township as a health director/health officer (HO) since June 30, 2008. As a HO his duties entail supervising the health department. William Wallace testified as follows,

As an HO I am responsible for the entire health department. I report to Kevin Boyle, administrator. I have several direct reports including Muhaw. Regarding development and construction in the Township, the health department's responsibility is reviewing permit applications and site plans for the placement of septic systems and wells.

ArcExplorer is a commercial computer program that the Township purchased prior to my employment with the health department. To the best of my knowledge the mapping data within ArcExplorer comes from NJDEP. The health department uses it as a tool to determine if a particular piece of property contains fresh water wetlands, flood hazard areas, highlands, and/or buffer areas. It is not the final say on wetlands, the NJDEP is.

I received notice of an issue with the Jarvis property on October 9, 2008, during a meeting with Muhaw and Taffera. They told me there was a discrepancy with the maps of Jarvis's property. I thought there was just a data change in ArcExplorer and did not think it was a big deal. On October 22, 2008, I received Muhaw's and Taffera's memo regarding the incident and I scheduled a meeting with the three of us and the Petitioner. During the meeting the Petitioner became visibly upset and stated he was forced to change "wetlands" to "suspected wetlands" on Jarvis's property map but could not remember who told him to do so. He later claimed Bill Drew (Drew) told him to change the data. Petitioner also admitted to changing Mazzocchi's property map, by changing the property lines. I then brought the incident to the administrator's attention.

The change from "wetlands" to "suspected wetlands" is significant because it gives contractors an extra advantage, puts the public's trust at risk, and can be an environmental concern. It gives contractors a reason to fight me or bring a lawsuit against the Township when the health department tells them they need to go to NJDEP. The change in Jarvis's property map did not change the decision of Muhaw to deny Jarvis's permit.

On cross-examination, William Wallace responded as follows,

There does not appear to be any changes to the data of the Jarvis property map, only the legend. I have no idea whether the data in ArcExplorer is accurate. I assumed the data is accurate up to one meter because I used to work for the government. I do not know who is updating ArcExplorer now. I only received basic training on how to access ArcExplorer by Petitioner. I did not need further training because I do not use the tool.

One day after the discussion with Petitioner, I discussed the incident with the Passaic County Prosecutor's office. Petitioner altered the legend after Muhaw denied Jarvis's application. Jarvis then took the matter to NJDEP, who makes the final determination. I checked ArcExplorer and I could not find any other changes except in Jarvis and Mazzocchi. With regard to the Mazzocchi property, there are multiple different maps from different years, and it is unknown which is more accurate. FEMA creates a form map which the NJDEP uses. The health department does not use form maps.

Regardless of the changes to Jarvis's property map the permit application would have been sent to NJDEP for final determination.

At the meeting, Petitioner indicated Bill Drew was the person pressuring him, but then denied this later. Bill Drew was the former land use administrator. I do not know what the job functions of a land use administrator are.

**(Respondent's Witness)**

William H. Drew was employed with the Township as a planning director (PD) for seventeen years. As a PD he supervised about fifteen employees. William H. Drew testified as follows,

I first met Petitioner while he was a student at William Patterson University. He approached me about a summer internship. He was invaluable to the Township during his internship in 1996. Petitioner was eventually hired by the Township in 1999 when I advised him of a job opening. I supervised Petitioner when he was a GIS specialist.



There were always problems with the health department and the way they interpreted data. Failure to approve applications by the health department was a source of controversy in the office. I could have directed him to make a change to the legend of a map. Petitioner could have made hundreds if not thousands of maps during the course of his employment. I could have asked him to change various parts of a map to properly reflect data. This is part of the process when the department creates maps for presentation purposes.

As I understand it, the information in ArcExplorer was not used to issue permits. The only way to issue a permit was via a field investigation by a wetland expert. The permit was ultimately decided by NJDEP.

On cross-examination, William H. Drew responded as follows,

I never told Petitioner he could alter data presented by the NJDEP. In my opinion changing the title of a legend does not alter the underlying NJDEP data. Updating layers will not alter lot lines. It will just add information to the map. If there was a change in information regarding lot lines, Petitioner would be authorized to make the changes. Petitioner was required to inform me of any changes he made in ArcExplorer.

NJDEP data is not survey quality. Survey quality is much better. NJDEP data alone cannot be used to determine if there are wetlands on property. I believe there have been instances where NJDEP data showed wetlands and a physical inspection showed there were not wetlands. NJDEP will go out and perform a physical study to ascertain whether there are wetlands on property applying for a permit. The health department's project is generalized, and they will not have all the required elements of vegetation, soil type and hydrography to certify an area as a wetland. I believe "suspected wetlands" is a much more accurate description for NJDEP's data.

**(Respondent's Witness)**

Eugene J. Taffera was employed with the Township as a REHS from 1995 until February of 2010. As a REHS he performed septic-design review, septic-installation

review, nuisance complaints, food inspections, lake inspections, and camp inspections.

Eugene J. Taffera testified as follows,

I did have a role in the permitting process. Mainly I issued septic, well and pump permits. There was a wetlands issue with Jarvis's property in April, 2008. Because we found a possibility of wetlands on the area he was building, he needed to proceed to NJDEP for approval. Jarvis complained numerous times to the Township over his denial of a permit. At the time the health department denied Jarvis's application, the legend on ArcExplorer indicated that there were wetlands on the property. Later, at an unknown time the wetlands were changed to "suspected wetlands" on ArcExplorer. Only the health department's data was changed, other departments still had the property labeled at wetlands.

Months after the change, I questioned Petitioner about the discrepancy. Petitioner appeared nervous and repeatedly stated "They made me do it." Prior to that date, Petitioner never notified the health department he made changes to ArcExplorer. Petitioner also stated he changed Mazzocchi's property map because Mazzocchi complained about being denied a permit.

Other departments put pressure on the health department to approve developments. Coordination with other departments is difficult because at the time there was only myself and Muhaw working on these types of projects.

On cross-examination, Eugene Taffera responded as follows,

I did not have a conversation with Petitioner prior to our meeting in October about changes made in ArcExplorer. I only use ArcExplorer as a tool, and it is not definitive in determining where wetlands are located. I continued to use ArcExplorer after the changes were discovered. I do not know whether Jarvis went to NJDEP to determine the presence of wetlands. I know Mazzocchi went to the NJDEP but I do not know what the final determination was. I do not know if there were other changes made to maps. If a property like the Jarvis property is denied due to wetlands, they should consult their engineer and talk with NJDEP.

**(Respondent's Witness)**

Timothy W. Ligus has been employed by the Township since 1992. In 2008, he was employed as a building subcode official. Currently, he is employed as a construction official. Timothy W. Ligus testified as follows,

I was not certified as a wetlands expert in 2008. I do not have the ability or the knowledge to determine whether a property contains or does not contain wetlands. I never complained to Petitioner that the health department found wetlands where there were no physical wetlands.

On cross-examination, Timothy W. Ligus responded as follows,

I have only had casual conversations with Petitioner regarding wetlands. I have never forced Petitioner to change anything regarding wetlands.

**(Respondent's Witness)**

Vincent J. Lupo has been employed by the Township since October of 2000 as a zoning officer. His duties entail enforcing the land-developing ordinance. Vincent J. Lupo testified as follows,

I do not remember making a statement to Petitioner around April 2008 regarding the health department finding wetlands where there were no physical wetlands. I do not have the ability or the knowledge to determine whether a property contains or does not contain wetlands. I do not get involved in wetlands determinations.

**(Respondent's Expert Witness)**

Richard Cornell is employed as a senior associate with Hatch Mott MacDonald, a consulting engineering firm. Specifically, he is in the acid information and strategies area which includes GIS and engineering design. He has a Bachelor's of Engineering degree from Stevens Institute of Technology, and a Master's Degree in economics from

New York University. He has also held a professional engineering license since 1986. Richard Cornell testified as follows,

A GIS specialist cannot determine the presence of wetlands or flood plains. Their role is to compile information created by surveyors and environmental specialists. There is a difference between "accuracy" and "precision"; the DEP maps are correct in showing wetlands, but the map may not be precise. There was no valid reason for Petitioner to change the legend from "wetlands" to "suspected wetlands." I am not sure what the purpose of changing a legend to "suspected wetlands" might be; a more appropriate change would be "wetlands determined by DEP in 2006." I could not understand why Petitioner slightly altered the flood plain lines and why he also changed the boundary lines. In my opinion, Petitioner exceeded his authority in changing names of layers and changing the angle of the property. Restricting the flood plain area could impact public safety by affecting people upstream and affecting wildlife in the area.

It also appears that the angles of the property lines were changed, and experts are needed to examine the property to determine the exact location of the wetlands.

On cross-examination, Richard Cornell responded as follows,

I am not a surveyor or a certified GIS technician. My GIS technicians regularly update their data if they find more accurate data. The health department has no authority to declare land as "wetlands." Environmental specialists would need to investigate the land regardless of the assigned designation. The ArcExplorer is a screening tool to determine if there is more work to do. Buffer zones for wetlands do not stop at property lines. If property lines were altered, it would be important to check the buffer zones.

## **FINDINGS**

### **Credibility determinations**

When the testimony of witnesses is in disagreement, the trier of fact must weigh the witnesses' credibility in order to make factual findings. Credibility is the value that the fact finder gives to testimony of a witness and contemplates an overall assessment

of the witness's story in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9<sup>th</sup> Cir. 1963). Credible testimony must proceed from the mouth of a credible witness and must be such as common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955); Gilson v. Gilson, 116 N.J. Eq. 556, 560 (E. & A. 1934). A fact finder is expected to base credibility decisions on his or her common sense and life experiences. State v. Daniels, 182 N.J. 80, 99 (2004). Credibility is not dependent on the number of witnesses who appeared, State v. Thompson, 59 N.J. 396, 411 (1971), and the finder of fact is not bound to believe the testimony of any witness. In re Perrone, 5 N.J. 514, 521-22 (1950).

I **FIND** that all of the witnesses were credible.

### **FINDINGS OF FACT**

Based upon the testimonial and documentary evidence in the record, I **FIND** that the ArcExplorer is a free software package that can be downloaded from the internet and is a screening tool. I **FIND** that as a "tool," maps produced from the ArcExplorer software were not a definitive identifier of wetlands or buffer zones. I **FIND** that, the data displayed on the maps produced through this software by the various departments, was either FEMA data or NJDEP data that was uploaded onto petitioner's computer for use through this software package. I **FIND** that petitioner was authorized to make changes in information on the maps. I **FIND** that it was a normal practice in the use of this software to make changes in data where "more accurate data is available." I **FIND** that only the NJDEP can make final determinations with respect to whether a particular property contains wetlands and that the ArcExplorer was not designed to be used for this purpose and did not produce "State authorized map[s]." I **FIND** that petitioner prepared maps from the ArcExplorer for different departments which, based upon the data used by that particular department, produced different maps where property lines may differ. I **FIND** that the ArcExplorer maps are not "official documents" as a "Tax Map" would be an official document.

With respect to the Jarvis property, I **FIND** that petitioner altered the descriptive legend on the maps, from "wetlands" to "suspected wetlands" and did not alter any of the substantive data contained in the maps. I further **FIND** that this alteration did not change the permitting decision of respondent and therefore did not jeopardize the safety of the public or put the applicant at risk of violating NJDEP regulations, or otherwise have a "gross negative impact on the review of any particular property."

With respect to the Mazzocchi property, I **FIND** that the different ArcExplorer maps produced were different because the FEMA data uploaded for each was different. This resulted in variations as to whether there were wetlands covering parts of the property. I **FIND** that petitioner used updated data and did not "materially alter" data on the maps. The updates in data render the ArcExplorer maps valuable as "guides" only. I further **FIND** that this alteration did not change the permitting decision of respondent and therefore did not jeopardize the safety of the public or put the applicant at risk of violating NJDEP regulations, or otherwise have a "gross negative impact on the review of any particular property."

### **ANALYSIS AND CONCLUSIONS OF LAW**

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6, governs a public employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is liberally construed toward attainment of merit appointments and broad tenure protection. Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576, 580-81 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). The Act states that State policy is to provide appropriate appointment, supervisory, and other personnel authority to public officials so they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). To carry out this policy, the Act authorizes the discipline and termination of public employees.

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. In an appeal from such discipline, the

appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Therefore, the judge must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Delaware, Lackawanna and W. R.R., 111 N.J.L. 487, 490 (E. & A. 1933). For reasonable probability to exist, the evidence must be such as to "generate belief that the tendered hypothesis is in all human likelihood the fact." Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

#### Conduct Unbecoming a Public Employee

One of the grounds for discipline of public employees is "[c]onduct unbecoming a public employee." N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, supra, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)). Suspension or removal may be justified where the misconduct occurred while the employee was off duty. Emmons, supra, 63 N.J. Super. at 140.

There is no evidence that petitioner's conduct violated this provision of the Administrative Code. I **CONCLUDE** that respondent did not meet its burden of proof that petitioner engaged in conduct unbecoming a public employee. There is no evidence that his conduct was "such as to offend publicly accepted standards of decency." Karins, supra, 152 N.J. at 555.

Incompetency, Inefficiency and Neglect of Duty

Under N.J.A.C. 4A:2-2.3(a)(1), an employee may be subjected to major discipline for incompetency. There is no definition in the administrative code of the term "inefficiency," and therefore, it has been left to interpretation. In general, incompetence, inefficiency, or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Clark v. New Jersey Dep't of Agric., 1 N.J.A.R. 315 (1980). Incompetence means that an individual lacks the ability or the qualifications to perform the duties required. Steinel v. Jersey City, 193 N.J. Super. 629 (App. Div. 1984), aff'd on other grounds, 99 N.J. 1 (1985). Where evidence demonstrates that an appellant consistently performed her prescribed tasks in a manner well below that which is minimally acceptable for her position, the appointing authority has sustained its burden of establishing the charge. Clark, supra, 1 N.J.A.R. 315. Absence of judgment alone can be sufficient to warrant termination if the employee is in a sensitive position that requires public trust in the agency's judgment. See In re Herrmann, 192 N.J. 19, 32 (2007) (DYFS worker who waved a lit cigarette lighter in a five-year-old's face was terminated, despite lack of any prior discipline).

"In addition, there is no right or reason for a government to continue employing an incompetent and inefficient individual after a showing of inability to change." Klusaritz v. Cape May County, 387 N.J. Super. 305, 317 (App. Div. 2006) (termination was the proper remedy for a county treasurer who couldn't balance the books, after the auditors tried three times to show him how).

In reversing the MSB's insistence on progressive discipline, contrary to the wishes of the appointing authority, the



Klusaritz panel stated that “[t]he [MSB’s] application of progressive discipline in this context is misplaced and contrary to the public interest.” The court determined that Klusaritz’s prior record is “of no moment” because his lack of competence to perform the job rendered him unsuitable for the job and subject to termination by the county.

[Herrmann, supra, 192 N.J. at 35-36 (citations omitted).]

The fundamental concept that one should be able to perform the duties of the position is stated in Briggs v. Department of Civil Service, 64 N.J. Super. 351, 356 (App. Div. 1960), which happens to be a probationary period case involving a nurse:

Manifestly, the purpose of the probationary period is to further test a probationer’s qualifications. Neither the Legislature nor the Commission has given the courts any guidance in determining the extent of assistance or orientation which a probationer must receive. Undoubtedly her duties must be explained to her and she must be given reasonable opportunity to perform the duties expected of her. But this does not mean she is entitled to on-the-job training in the manner of performing her duties. This is what she must be qualified for—the proper performance of her duties as outlined by the appointing authority.

In the present case, respondent’s witness Drew stated that petitioner could have made hundreds if not thousands of maps during the course of his employment and that Drew could have asked petitioner to change various parts of a map to properly reflect data. He stated that this is part of the process when the department creates maps for presentation purposes. It was his understanding that the information in ArcExplorer was not used to issue permits. Further, the only way to issue a permit was via a field investigation by a wetland expert. The permit was ultimately decided by the NJDEP.

In Drew’s opinion, changing the title of a legend does not alter the underlying NJDEP data. If there was a change in information regarding lot lines, petitioner would be authorized to make the changes. This is not indicative of an employee whose conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance or that he consistently performed his prescribed tasks in a manner well below that which is minimally acceptable for his

position. Clark, supra, 1 N.J.A.R. 315. Further, there is no evidence that petitioner's conduct displayed an "absence of judgment" or lacks the ability or the qualifications to perform the duties required. Steinel, supra, 193 N.J. Super. 629.

I **CONCLUDE** that respondent failed to meet its burden of proving that petitioner engaged in conduct that demonstrated that he was inefficient, incompetent, failed to perform his duties, or neglected to perform his duties. I further **CONCLUDE** that petitioner's conduct did not warrant removal.

### **ORDER**

Based upon the foregoing, it is hereby **ORDERED** that the decision to terminate petitioner be and hereby is **REVERSED**.

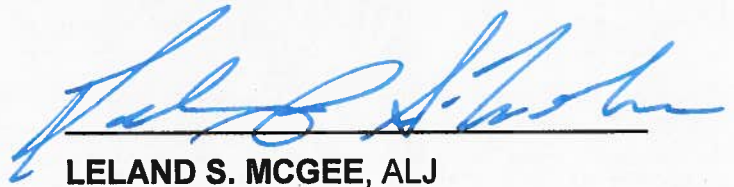
I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

January 23, 2014

DATE

  
LELAND S. MCGEE, ALJ

Date Received at Agency:

January 23, 2014

Date Mailed to Parties:

- JAN 24 2014



DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

lr

**APPENDIX**

**WITNESSES**

**For Petitioner:**

Robert Sparkes  
James Girvan  
Andrew Rowan  
Richard Cornell

**For Respondent:**

William H. Drew  
Eugene J. Taffera  
Susan A. Muhaw  
Timothy W. Ligus  
Vincent J. Lupo  
William Wallace

**EXHIBITS**

**For Petitioner:**

P-1    Marked but not Admitted  
P-2    Girvan Resume  
P-3    Girvan Data Development Access  
P-4    Girvan Report  
P-5    Rowan Resume  
P-6    Rowan Report

**For Respondent:**

R-1    Preliminary site plan review form for Jarvis property  
R-2    ArcExplorer printout for Jarvis property  
R-3    Memo/timeline prepared by Muhaw and Taffera

- R-4 ArcExplorer printout for Jarvis property dated April 14, 2008
- R-5 ArcExplorer printout for Jarvis property dated April 15, 2008
- R-6 Email from Muhaw to Battalia
- R-7 ArcExplorer map for Mazzocchi property dated October 12, 2004
- R-8 ArcExplorer map for Mazzocchi property dated October 24, 2005
- R-9 ArcExplorer map for Mazzocchi property dated February 6, 2009
- R-10 Marked but not admitted
- R-11 ArcExplorer map
- R-12 ArcExplorer map dated March 31, 2008
- R-13 ArcExplorer map for Jarvis property dated April 16, 2008
- R-14 Cornell Report/Map Photographs
- R-14A Cornell Color Map Photographs

SEP 17 2014

**SETTLEMENT AGREEMENT  
AND  
GENERAL RELEASE  
BETWEEN THE TOWNSHIP OF WEST MILFORD  
AND  
ROBERT SPARKES**

1. This Agreement is entered into to resolve Robert Sparkes v. Township of West Milford, O.A.L. Docket No. CSV 0133-11, Agency Docket No. 2011-2974, as well as all matters arising out of Robert Sparkes ("Sparkes") employment with the Township of West Milford ("Township").
- 2.(a) The Township's February 29, 2009 termination of Sparkes shall be rescinded and converted into a resignation in good standing as of the date of the signing of the Agreement.
- (b) The Township shall pay Sparkes 15 months of back pay (from March 1, 2009 through May 31, 2010). This amounts to \$94,738.75, with normal payroll deductions to be taken from this gross amount. This payment shall be made within 30 days from the date of full execution of this Agreement. The Township shall cooperate and furnish all information requested from the Public Employees' Retirement System ("PERS") with respect to Sparkes' retirement pension application. However, the parties recognize that the determination as to the amount of creditable salary, as well as the determination of the amount of the pension, is exclusively that of PERS and this Agreement is final and binding, regardless of PERS' determination.
- (c) Sparkes status from June 1, 2010 to the date of the signing of this Agreement shall be classified as a "leave of absence without pay". Sparkes shall not receive

or accrue any benefits whatsoever during this period of time.

- (d) Sparkes, in light of 2(a) above, is entitled to payment of certain accrued time under current Township policy and its collective negotiations agreement with AFSCME. Sparkes shall be paid pursuant to this Agreement/policy in the amount of \$23,650.71, with the normal payroll deductions made for all employees that resign in good standing. Payment shall be made by February 1, 2015.

3. Complete Release and Covenant Not to Sue

In consideration of the settlement herein above, Sparkes, his heirs, assigns and agents (hereinafter referred to collectively as "Sparkes") voluntarily enter into this Agreement, and certify that they have not been threatened or coerced into signing this Agreement, on the terms which follow:

- a. Sparkes hereby releases, waives and discharges the Township, its affiliated departments, and its officers, trustees, agents, employees, successors and assigns (hereinafter collectively referred to as the "Releasees") from each and every claim, demand, cause of action, obligation, damage, complaints or action or writ of any kind, nature, character or description that Sparkes had, now has, or may in the future have against the Releasees on account of or arising out of any matter or thing that has happened, developed or occurred prior to the date of this Agreement including, but not limited to, the Disciplinary Action. This Complete Release includes, but is not limited to, any claim, demand, cause of action, obligation, claim for damages of any kind, complaint, expense, compensation, or action or writ of any kind, nature, character or description arising out of or under Federal, State or municipal statute or ordinance and any other law (whether such be common law, decisional law or statutory law), rule,

regulation, executive order or guideline, and any and all claims for attorney's fees and costs arising from the above acts including, but not limited to:

i. Any claim, cause of action, demand or complaint arising out of or under the New Jersey Law Against Discrimination (LAD) which, among other things, prohibits discrimination in employment on the basis of an individual's race, creed, color, religion, sex, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, handicap, atypical hereditary cellular or blood trait or liability for service in the Armed Forces of the United States.

ii. Any federal claim, cause of action, demand or complaint arising out of or under the Federal Title VII of the Civil Rights Act of 1964 (Title VII) or the Civil Rights Act of 1991, (as amended) which, among other things, prohibit discrimination in employment on account of a person's race, color, religion, sex or national origin.

iii. Any claim, cause of action, demand or complaint arising out of or under the Federal Age Discrimination in Employment Act of 1967 as amended (ADEA), which among other things, prohibits discrimination in employment on account of a person's age.

iv. Any claim, cause of action, demand or complaint arising out of or under the Federal Americans with Disabilities Act (ADA), which, among other things, prohibits discrimination in employment on account of a person's disability or handicap.

v. Any claim, cause of action, demand or complaint arising out of or under the Federal Family and Medical Leave Act (FMLA) which, among other things, entitles an employee to take reasonable leave for medical reasons for the birth or adoption of a child, and for the care of a child, spouse or parent who has a serious health condition and any claim, cause of action, demand or complaint arising out of or



under the New Jersey Family Leave Act (NJFLA).

vi. Any claim, cause of action, demand or complaint arising out of or under the Federal Rehabilitation Act of 1973, as amended, which among other things, prohibits discrimination in employment by Federal contractors against individuals with disabilities.

vii. Any claim, cause of action, demand or complaint arising out of or under the Federal Employee Retirement Income Security Act of 1974, as amended (ERISA), which among other things, regulates pension and welfare plans and prohibits interference with individual rights protected under that statute.

viii. Any claim, cause of action, demand or complaint arising out of or under the Federal Older Workers Benefit Protection Act (OWBPA) which, among other things, amends provisions of ADEA and prohibits discrimination in employment and employment benefits on account of a person's age.

ix. Any claim, cause of action, demand or complaint arising under the New Jersey Workers' Compensation Act, which, among other things, provides benefits to workers injured in the course of their employment (as described in 1c).

b. If Sparkes violates this Complete Release by filing any claim, charge or complaint as prohibited above, Sparkes agrees to pay all costs and expenses of defending against the suit incurred by Township and/or the Releasees, including reasonable attorney's fees.

c. Sparkes agrees that he is not entitled to and will not become entitled to anything from Releasees except for the payments provided for in this Agreement and that he will not seek anything further from Releasees.

d. This Release is intended by the parties to be construed to release any

and all claims and rights arising on or before the date of the execution of this Agreement to the fullest extent permitted by law. By signing this Agreement, Sparkes also waives any right to obtain discovery in any subsequent litigation that is related to events occurring prior to the date of execution of this Agreement. This paragraph is not intended to limit the parties from instituting legal action for the sole purpose of enforcing this Agreement.

4. Consultation with Attorney

Sparkes has had the opportunity to consult with an attorney with respect to this Agreement.

5. Complete Agreement

This Agreement contains the entire agreement between Sparkes and the Township, and each of them, with respect to the subject matter and supersedes all prior agreements, understandings, and/or dealings whether written or otherwise with respect to the same subject matter. There is no agreement on the part of the Township to do anything other than what is expressly stated in this Agreement. This Agreement shall in all respects be interpreted, enforced and governed by the Laws of the State of New Jersey.

It is understood between and among all parties hereto that the terms of this settlement shall not have any precedential effect or constitute binding practice.

6. Modification

No modification or amendment of this Agreement will be enforceable unless it is in writing and signed by the party to be charged.

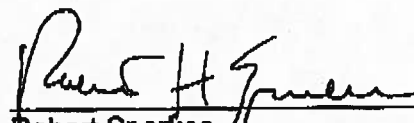
7. Severability

Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions shall not be affected thereby and said illegal, unenforceable or invalid part, term, or provision shall be deemed not part of this Agreement.

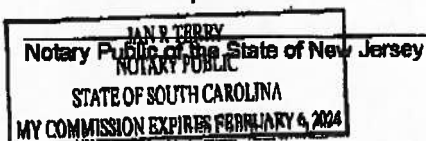
8. Attestation

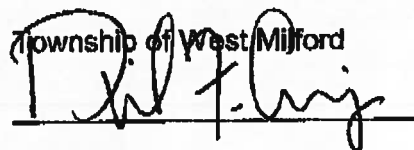
Sparkes represents and warrants that he has carefully read each and every provision of this Agreement and that he fully understands all of the terms and conditions contained in each provision of this Agreement. Sparkes further represents and warrants that he enters into this Agreement voluntarily, of his own will, without any pressure or coercion from any person or entity including, but not limited to the Township.

IN WITNESS WHEREOF, and intending to be legally bound hereby, I Robert Sparkes executed the foregoing Agreement this 16 day of September, 2014.

  
Robert Sparkes

Sworn and subscribed before me  
this 16 day of Sept. 2014



Township of West Milford  


Dated:

