

**ORDINANCE 2023-04**

**TOWNSHIP OF HARDYSTON  
SUSSEX COUNTY, NEW JERSEY**

**ORDINANCE OF THE TOWNSHIP OF HARDYSTON, IN THE COUNTY OF SUSSEX AND STATE OF NEW JERSEY, AMENDING THE TOWNSHIP MUNICIPAL CODE AT CHAPTER 33, LAND USE PROCEDURES, ARTICLE I, JOINT LAND USE BOARD, TO ESTABLISH THE APPOINTING AUTHORITY FOR MEMBERS THEREOF**

**WHEREAS**, the Township of Hardyston’s Charter (‘Charter’) establishes that its form of government was created as a special charter form government, to be governed by only certain provisions of the Faulkner Act; and

**WHEREAS**, the Charter establishes that the Township Council may provide for the manner of appointment of any planning board, zoning board of adjustment, or personnel board in the Township and may create commissions and other bodies with advisory powers; and

**WHEREAS**, pursuant to Ordinance #2022-11, the Township Council amended the Township’s Municipal Code (‘Code’) in order to merge the Township’s Planning Board and Zoning Board of Adjustment into a single Joint Land Use Board (‘Joint Land Use Board’); and

**WHEREAS**, pursuant to N.J.S.A. 40:55D-23, the Joint Land Use Board must include four (‘4’) classes of membership (‘Classes’): Class I, Class II, Class III, and Class IV; and

**WHEREAS**, N.J.S.A. 40:55D-23 establishes criteria regarding the appointing authority for members of each of the Classes; and

**WHEREAS**, pursuant to N.J.S.A. 40:55D-23, Class IV members are to be appointed by the Mayor, unless otherwise provided for by ordinance in the case of the council-manager form of government or the ‘the municipal manager form of government’; and

**WHEREAS**, as provided for by ordinance prior to enactment of Ordinance #2022-11, the authority to appoint Class IV members belonged to the Township Council; and

**WHEREAS**, the Township Council wishes to clarify, pursuant to the merger of Township’s former Planning Board and former Zoning Board of Adjustment into a single Joint Land Use Board, that the Council now deems it appropriate for the authority to appoint Class IV members to the new Joint Land Use Board be that of the Mayor; and

**WHEREAS**, the Township Council wishes to clarify further where lies the appointing authority for members of each of the Classes.

**NOW THEREFORE, BE IT ORDAINED**, by the Mayor and Township Council of the Township of Hardyston, County of Sussex, State of New Jersey, as follows:

**SECTION 1.** Chapter 33, Land Use Procedures, Part 1, Article 1, Joint Land Use Board, shall be amended to read as follows:

Article I. Joint Land Use Board

§ 33-1 Joint Land Use Board.

A. Pursuant to the provisions of N.J.S.A. 40:55D-23, there is hereby established a Joint Land Use Board of nine (9) members, consisting of four ('4') classes, with the appointing authority for members of each class, respectively, as follows:

i. Class I - The Mayor, or the Mayor's designee in the absence of the Mayor, as the Mayor shall have the right of appointment.

ii. Class II - One of the officials of the municipality other than a member of the governing body to be appointed by the Mayor, who shall have the right of appointment, provided that the member of the Environmental Commission who is also to be designated a member of the Planning Board as required by N.J.S.A. 40:56A-1 shall be deemed to be the Class II Joint Land Use Board member in the event that there is among the Class IV or alternate members of the Joint Land Use Board a member of the Board of Education.

iii. Class III – Members of this class shall be appointed by the Township Council.

iv. Class IV – Other citizens of the municipality to be appointed by the Mayor, who shall have the right of appointment. The members of Class IV shall hold no other municipal office, position or employment, except that one such member may be a member of the Historic Preservation Commission, if any. A member of the Board of Education may be a Class IV member. The member of the Environmental Commission who is also to be a member of the Planning Board as required by N.J.S.A. 40:56A-1 shall be a Class IV Joint Land Use Board member, unless there is among the Class IV or alternate members of the Joint Land Use Board a member of the Historic Preservation Commission and a member of the Board of Education, in which case the member common to the Joint Land Use Board and Municipal Environmental Commission shall be deemed a Class II member of the Joint Land Use Board. Membership on a municipal board or commission whose function is advisory in nature, and the establishment of which is discretionary and not required by statute, shall not be considered the holding of office.

v. Alternate Members – There shall also be four (4) alternate members appointed to the Joint Land Use Board in the same manner as Class IV members, who shall be designated by the Chairperson of the Joint land Use Board as "Alternate No. 1," "Alternate No. 2," "Alternate No. 3," and "Alternate No. 4." These Alternate members may participate in discussion of the proceedings but may not vote except in the absence or disqualification of a regular member of any class. A vote shall not

be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

- B. In addition to the mandatory powers and responsibilities as set forth in the statute, the Joint Land Use Board shall participate in the preparation and review of programs or plans required by state or federal law or regulation, assemble data on a continuing basis as part of a continuous planning process and perform such other advisory duties as are assigned to it by the governing body.
- C. The Joint Land Use Board shall have the following additional powers and duties:
  - (1) To prepare a Master Plan in accordance with the provisions of N.J.S.A. 40:55D-28.
  - (2) To administer the provisions of Chapter 33, Land Use Procedures, of the Code of the Township of Hardyston.
  - (3) To approve conditional use applications, in accordance with the appropriate provisions of Chapter 185, Zoning, of the Code of the Township of Hardyston, pursuant to N.J.S.A. 40:55D-67.
- D. The Joint Land Use Board shall reorganize annually in January on a date to be scheduled after the annual reorganization meeting of the governing body.

§ 33-2 Former Zoning Board of Adjustment powers transferred to Joint Land Use Board.

- A. All powers formerly vested in the Board of Adjustment, as set forth under Chapter 33, Land Use Procedures, Article II, Zoning board of Adjustment, and other chapters in the Township of Hardyston Code, shall be vested in the Township of Hardyston Joint Land Use Board.
- B. The Joint Land Use Board shall have four (4) alternates who shall be appointed and shall serve as set forth by § 33-1(A)(v).
- C. Any ordinances or sections thereof which are presently in effect in the Township of Hardyston and refer to the “Board of Adjustment” shall hereinafter be taken to refer to the “Joint Land Use Board.”

**SECTION 2.** This Ordinance may be renumbered for purposes of codification.

**SECTION 3.** All ordinances of the Township of Hardyston that are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

**SECTION 4.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

**SECTION 5.** This Ordinance shall take effect immediately upon final passage, approval and publication as required by law.

\_\_\_\_\_  
Brian Kaminski, Mayor

ATTEST:

\_\_\_\_\_  
Jane Bakalarczyk, Clerk

**NOTICE**

**PLEASE TAKE NOTICE** that notice is hereby given that the above ordinance was introduced and passed at the regular meeting of the Hardyston Township Council held at the Municipal Building, 149 Wheatsworth Road, Hardyston, New Jersey, on March 22, 2023. The same came up for final adoption at a meeting of the Township Council of the Township of Hardyston held on April 26, 2023, and after all persons present were given the opportunity to be heard concerning the same, it was finally passed, adopted and will be in full force and effect in the Township according to law.

Jane Bakalarczyk, RMC/CMC

Municipal Clerk