

## Tewksbury, Friends vs. JCP&L and the state

*Posted: Thursday, August 11, 2011 1:00 am*

*By DEB DAWSON, Editor Recorder Community Newspapers*

**TEWKSBURY TWP.** – There are “many court challenges” in play in the fight by the Township Committee and Friends of the Fairmount Historic District (Friends) to keep a JCP&L substation from being built at 8 Fox Hill Road.

“It’s been a busy summer” said Jon Holt, issues manager for the Friends in an email on Monday to the Hunterdon Review.

The proposed site for the utility is very close to three residential properties and in the middle of an historic district listed on both the state and national historic registers.

The Highlands Council also issued a decision in February saying the substation does not belong where it is being proposed. The state Division of Environmental Protection (NJDEP) over-ruled that decision.

### Stay Denied

In June, the state Appellate Court denied the Friends request for a stay on the NJDEP decision overruling the Highlands Council.

“Unfortunately, the state Appellate Court doesn’t give any explanation for its decision. This means that JCP&L could start construction work at any time,” Holt said.

The utility has already cleared some trees to create a driveway at the site. To go further, however, “it would be doing so ‘at risk’ because there is a pending appeal by (the Friends) and Tewksbury Township challenging the NJDEP decision,” Holt said.

If the state Appellate Court rules in favor of the township and the Friends, JCP&L would be required to return the property to its original condition.

Also this summer, the Supreme Court declined to review the state Appellate Court’s position on a decision by the Board of Public Utilities (BPU) to allow the substation to be constructed.

The Friends’ argued that the BPU and the State Appellate Court failed to give proper weight to the decision by the Tewksbury Land Use Board that the proposed electrical substation could not meet the requirements of local ordinances and it will be a heavy industrial use and discordant facility in an established historic district.

The Supreme Court gave no explanation on why it would not hear the case.

Holt said the Friends and the township are now going to appeal the NJDEP's decision to make the substation exempt from the Highlands Act when it decided to overrule the Highlands Council.

He added the Friends will also continue to raise the public safety issue and that under the Highlands Act NJDEP must abide by the section of the act that states that a major development project cannot be approved by DEP unless and until it is determined that the proposed development: "is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety and welfare."

Two families on flaglots have a shared driveway that would run adjacent to the proposed substation. The fire company and rescue squad have gone on record stating they would not use the driveway if there were an explosion or fire at the substation because it would be unsafe for their personnel. JCP&L proposes building a footpath as a means for the two families to escape, if necessary, out to Route 517.

"JCP&L and the state agencies reviewing and approving the project have ignored the public safety impacts the project will have on nearby residents," declared Holt.

He said the Friends' brief is due to the State Appellate Court on Wednesday, Aug. 31. The reply brief process will be completed in October and then it will go to the judges to review and make a decision.

### **Help From Outside**

**Holt said the Friends are receiving support from the N.J. Highlands Coalition and the legal community. In July the organization received a \$4,000 grant from the coalition to help pay legal expenses of the appeal.**

**"It has also helped us to obtain the support of the Columbia University Environmental Law Clinic."**

The law clinic will assist the Friends and Tewksbury Township lawyers in the development of the briefs for the case.

"We also anticipate that the Columbia University Law Clinic will join the case and file a brief in defense of the Highlands Act and the Highlands Council decision," said Holt, concluding, "So the fight is far from over!"