

MINUTES FOR
MONTGOMERY TOWNSHIP COMMITTEE MEETING
March 7, 2013

1. Montgomery Township Committee met at the Municipal Building, 2261 Van Horne Road, Belle Mead, NJ at 7:00 p.m. on the above date. Those present were:

TOWNSHIP COMMITTEE: Mayor Trzaska, Deputy Mayor Graham,
Committeemembers Smith, Madrid and Sugden

Also present were:

TOWNSHIP ATTORNEY - Kristina P. Hadinger, Esq.

TOWNSHIP ADMINISTRATOR - Donato Nieman

CHIEF FINANCIAL OFFICER - Walter Sheppard

TOWNSHIP CLERK - Donna Kukla

2. Mayor Trzaska stated the following: "Under the provisions of the Open Public Meetings Act, notice of the time and place of this meeting has been posted and sent to the officially designated newspapers."

3. Mayor Trzaska led the Salute to the Flag.

4. **RUN WITH ROTARY PROCLAMATION**

WHEREAS, The Rotary Club of Montgomery/Rocky Hill is a vibrant and generous service organization providing essential support to individuals and families in our community; and

WHEREAS, Rotary's motto - "Service Above Self" - is manifest in its members' strong commitment to important local causes including the Montgomery Food Pantry, Montgomery EMS, The Senior Center, Crawford House, college scholarships and Career Development Awards, Mary Jacobs Library and the Interact community service clubs at our schools; and

WHEREAS, The annual Run With Rotary, to be held April 28 this year at the Upper Middle School, is one of Montgomery's signature community events, is the primary source of funds for Rotary's charitable giving for these and many other critical needs in New Jersey and around the world; and

WHEREAS, Montgomery Township is a long-time sponsor of the event, providing support in the form of a large tent and assistance from the Department of Public Works and the Recreation Department.

NOW, THEREFORE, BE IT RESOLVED That the Township Committee of the Township of Montgomery commends the Rotary Club of Montgomery/Rocky Hill for its outstanding work in and beyond our community; and

BE IT FURTHER RESOLVED That the Township Committee encourages Montgomery residents and businesses to join in supporting the Run With Rotary to help make this year's event the biggest and most successful ever, so that our outstanding local Rotary Club can continue its robust programs of giving, volunteering and strengthening our community.

- 4-1. Deputy Mayor Graham moved the adoption of the foregoing resolution. The motion was seconded by Committeeman Smith and carried unanimously.

- 4-2. Bob Milhiser, Rotary Club President, thanked the Township Committee for this proclamation and for the help that the Township has given them. He explained a bit about the Run with Rotary. They raise between \$30,000.00 and \$40,000.00 a year and that is all given back to community and international. Their goal for 2013 is to increase the number of participants by approximately 10% and also to increase their funds they collect by approximately 20%. He gave a brief background of the run. He explained that the Run with Rotary started out as the Run with Aimee, which was started by a group of people who had gotten together to collect because of someone who had been very ill. The Rotary took it over in about 2005 because these people had some problems continuing with it. They looked at who could take it over and they asked the Rotary Club to help. He stated that they are also having a membership drive in March, and invited anyone who would like to join to stop by their cocktail party on March 14 at the Cherry Valley Country Club.

5. **PUBLIC COMMENT**

- 5-1. Brian Cige, Coldstream Court, spoke about the need for benches outside the building by the Court Room entrance. He stated that there are people who have mentioned the need and he asked if the Township Committee could do something about this.

(Item #5 Cont.)

- 5-2. Mr. Cige spoke about the smoking ban issue. He stated that he is an attorney and in his practice he has challenged governmental entities that he thought were acting beyond their authority. He felt that the Township Committee should not pass this kind of ban. He view is that the goal of restricting smoking in the Township is a good goal, but he was trying to find the authority for what the Township is trying to do and he doesn't see it. The State of New Jersey passed a Smoke-Free Air Act and what this says is: "the provisions of this Act shall supersede any other statute, municipal ordinance, rule, regulation, etc." He has represented some businesses with outdoor areas for eating that were very concerned about outside restrictions, and in response to that the Legislature looked at this and realized that they really didn't have the authority to restrict outside. The State's conclusion was that they were only going to regulate indoor space and that is all the State authorizes. It does not allow for enforcement of this by anybody other than a Board of Health, and the enforcement mechanisms are identified in the statute. He stated that the signs on this Municipal Building bothered him, saying that violators are subject to up to 60 days in jail, etc., it is just wrong. There is no legal basis for any criminality associated with even smoking in buildings, and there is no authority to restrict smoking outside of buildings. He is all for advisory signs in the parks. He felt that, just as a municipality has an obligation to improve the health, safety and welfare of its residents, it also has an obligation to make sure that if it passes an ordinance that there is a lawful basis for such ordinance. He didn't feel that it was the Board of Health's role to make recommendations about this issue. The Board of Health's role is to enforce the indoor space restriction by State law.

Mayor Trzaska felt that the recommendations by the Board of Health were appropriate. Attorney Hadinger stated that the Board of Health has overall responsibility and interest in health matters in general. She explained that the only area the Township is considering in this No Smoking policy is in Township Parks and municipally owned properties. She stated that in the law Mr. Cige quoted there is an exception and that exception is except where a municipality has acted under its general police powers, under Title 40.

Deputy Mayor Graham stated that in the Township Committee's last few discussions on this, there has been discussion directly on whether there is a link between the health issue and what the code would prohibit. That was the basis for which some of the Township Committee were concerned about a Park-wide ban on smoking.

- 5-3. Walter Beadling, Thornton Way, spoke about the no smoking in Township parks. He emphasized that smokers have rights just as much as non-smokers have rights. He felt that this would be very difficult to enforce, even scaling it back to "Where children are present". He thought that posting some signs that say "We have an expectation that people are not going to smoke when children are playing" is a very sensible way to do this.
- 5-4. Mr. Beadling stated that he knew the Budget was coming up and he commented that he understood that the Township was going to keep it just under the 2% CAP. He felt that the Township was doing a great job of trying to work with what was left them by past administrations, but his municipal taxes have gone up considerably. He challenged the Township Committee to cut spending as much as possible. He felt that what was needed was to find some new, real revenues.

Mayor Trzaska stated that even if everything was status quo, such as number of employees and services, there still are things that will increase like pensions, health insurance and increases as per the Union contracts. Also, the money expended because of Superstorm Sandy has to be accounted for in this budget. The Township will be reimbursed by FEMA, but at this point the Township is still waiting for some money from Hurricane Irene.

Committeeman Smith stated that while the Township Committee appreciates what Mr. Beadling is saying and they work hard to get to what he is talking about, he stated that the municipal portion of taxes is very small compared to the Board of Education portion.

- 5-5. Gail Ernst, Briar Hill Court, stated she would like the Township Committee to seriously consider passing the smoking ban for Township parks and recreation areas. She thought that this would be a powerful message to send, not just to the public, but most importantly to the children, that smoking is a behavior that is not acceptable.

6. **BOARD OF HEALTH RECOMMENDATIONS REGARDING NO SMOKING IN TOWNSHIP PARKS**

Stephanie Carey, Township Health Officer, briefed the Township Committee on the findings of the Board of Health from the February 13 meeting regarding No Smoking in Township Parks. She stated that the State Health Department is encouraging municipalities to adopt this ordinance and these regulations. A State-wide bill to ban smoking in parks has been under consideration in the legislature. One of the points of argument over whether that legislation should be adopted state-wide is that municipalities should take the lead in adopting "Smoke-Free Parks" regulations. Since the subject was discussed in January, this type of ordinance is moving ahead in many municipalities in the State. The Board of Health did adopt a resolution on February 13 favoring smoke-free parks in areas where children may be present. To characterize the initial conversation, there was discussion that perhaps it should be the Township Committee that comes up with a definition of "where children may be present" but based on recent conversations with the Board of Health President, the Board will attempt to provide some additional guidance on the definition. Based on research by Board of Health member Dr. George Lambert, a pediatric cardiologist with UMDNJ, when someone smoking is standing next to or within approximately two feet from another person, it is equivalent to indoor environmental tobacco smoke exposure.

Township Committee felt that maybe signs of discouragement might be a better alternative. There would further discussion in the future.

7. **CONSENT AGENDA** - All matters listed hereunder are considered to be routine in nature and will be enacted in one motion. Any person may request that an item be removed for separate consideration.

A. **RESOLUTION #13-3-65 - APPROVAL OF FIREWORKS - Bedens Brook Club**

BE IT RESOLVED That authorization is granted for the Bedens Brook Club to conduct a fireworks display on June 28, 2013 (rain date - June 29, 2013) at Bedens Brook Club Golf Course/Range. Approvals have been granted by the Police Department and Fire Protection Inspector Roy Mondì.

B. **RESOLUTION #13-3-66 - APPROVAL OF USE OF TENT - Run with Rotary 2013**

BE IT RESOLVED That the Montgomery Township Committee hereby approves the use of the Township tent for the Run with Rotary 2013 road race as the Township Recreation Department will be one of the sponsors of the event and the advertising will be provided to the Township. The event will be held on Sunday, April 28, 2013.

C. **RESOLUTION #13-3-67 - APPROVAL OF OUTDOOR ASSEMBLY - Run with Rotary 2013**

BE IT RESOLVED By the Montgomery Township Committee as follows:

1. The Rotary Club of Montgomery/Rocky Hill has requested approval of the Township Committee to conduct a 5-K race and 1-mile fun walk on April 28, 2013. The events will start and finish at the Montgomery Upper Middle School parking lot.
2. The Township Committee has considered the application and hereby grants the same subject to the following conditions:
 - (a) This approval is for the period specified and is not to be considered approval to conduct similar events without Township Committee approval.
 - (b) Portions of Burnt Hill, Sunset, Acorn, Fieldcrest, Brandywine, Kildee Roads and Westbury Court will be closed to vehicular traffic on Sunday, April 28, 2013 beginning at 10:00 a.m.
 - (c) This event shall be held subject to the provisions of the Montgomery Township Code, Outdoor Assembly, Chapter 4-2.1.
3. The Montgomery Township Police Department has reviewed and approved the application and has no objection to the road closings provided that the race takes the same route as in years past and four officers on private duty are utilized to control traffic.
4. The organizers will obtain the required tent permit from Township Fire Marshall, Roy Mondì.
5. The organizers have obtained the required health certificates from the Township Health Officer, Stephanie Carey.

D. **RESOLUTION #13-3-68 - AUTHORIZING THE PURCHASE OF REPLACEMENT VEHICLES FOR THE POLICE DEPARTMENT FROM SOMERSET COUNTY IMPROVEMENT AUTHORITY**

WHEREAS, There exists a need for the replacement of three vehicles for the Police Department of the Township of Montgomery; and

WHEREAS, Said replacement vehicles are available through a contract of the State of New Jersey Purchase Bureau; and

WHEREAS, Said funds are available through the Somerset County Improvement Authority; and

WHEREAS, The Chief Financial Officer has certified the availability of said funds.

NOW, THEREFORE, BE IT RESOLVED By the Township Committee of the Township of Montgomery that the Purchasing Agent is hereby authorized and directed to purchase three (3) 2013 Chevrolet Caprice PPV RWD V8 Police Patrol Vehicles from Day Chevrolet in Monroeville, PA 15146 per State Contract E2926, for an amount not to exceed \$83,283.06.

E. **RESOLUTION #13-3-69 - AUTHORIZING THE EQUIPPING OF REPLACEMENT VEHICLES FOR THE POLICE DEPARTMENT FROM SOMERSET COUNTY IMPROVEMENT AUTHORITY**

WHEREAS, There exists a need to equip the replacement three vehicles for the Police Department of the Township of Montgomery; and

WHEREAS, Said equipment for the replacement vehicles are available through a contract of the State of New Jersey Purchase Bureau; and

WHEREAS, Said funds are available through the Somerset County Improvement Authority; and

WHEREAS, The Chief Financial Officer has certified the availability of said funds.

NOW, THEREFORE, BE IT RESOLVED By the Township Committee of the Township of Montgomery that the Purchasing Agent is hereby authorized and directed to equip three (3) 2013 Chevrolet Caprices by East Coast Emergency Lighting per State Contract E1336, for an amount not to exceed \$18,088.50.

(CONSENT AGENDA Cont.)

F. **RESOLUTION #13-3-70 - AUTHORIZING THE APPLICATION OF MONTGOMERY TOWNSHIP GRAPHICS ONTO TWO REPLACEMENT VEHICLES FOR THE POLICE DEPARTMENT OF THE TOWNSHIP OF MONTGOMERY**

WHEREAS, There exists a need to apply Montgomery Township graphics onto two replacement vehicles for the Police Department of the Township of Montgomery; and

WHEREAS, Said funds are available through the Somerset County Improvement Authority; and

WHEREAS, The Chief Financial Officer has certified the availability of said funds.

NOW, THEREFORE, BE IT RESOLVED By the Township Committee of the Township of Montgomery that the Purchasing Agent is hereby authorized and directed to allow the application of the graphics of Montgomery Township on two (2) 2013 Chevrolet Caprices by Lew Pinella Sign Co., for an amount not to exceed \$1,250.00.

G. **RESOLUTION #13-3-71 - RESOLUTION AUTHORIZING THE TOWNSHIP OF MONTGOMERY TO JOIN THE HUNTERDON EDUCATIONAL SERVICES CO-OP (HESC)**

WHEREAS, N.J.S.A. 40A:11-11(5) authorizes contracting units to establish a Cooperative Pricing System and to enter into Cooperative Pricing Agreements for its administration; and

WHEREAS, The Hunterdon County Educational Services Commission Cooperative Pricing System, hereinafter referred to as the "Lead Agency" has offered voluntary participation in a Cooperative Pricing System for the purchase of goods and services; and

WHEREAS, On March 7, 2013 the governing body of the Township of Montgomery, County of Somerset, State of New Jersey duly considered participation in a Cooperative Pricing System for the provision and performance of goods and services.

NOW, THEREFORE BE IT RESOLVED That this Resolution shall be known and may be cited as the Cooperative Pricing Resolution of the Township of Montgomery pursuant to the provisions of NJSA 40A:11-11(5) and the Purchasing Agent is hereby authorized to enter into a Cooperative Pricing Agreement with the Lead Agency. The Lead Agency shall be responsible for complying with the provisions of the Local Public Contracts Law NJSA 40A:11-1 et seq. and all other provisions of the revised statutes of the State of New Jersey.

H. **RESOLUTION #13-3-73 - RELEASE OF PERFORMANCE GUARANTEE - Renwood Princeton Self Storage - Waterline Easement Landscape Restoration Bond**

WHEREAS, Gail Smith, Township Engineer, has certified on February 25, 2013 that all work has been satisfactorily completed with respect to the waterline easement landscape restoration at Block 34001, Lot 57.01 and therefore recommends the release of the cash Performance Guarantee to Renwood Princeton Self Storage, LLC.

NOW, THEREFORE, BE IT RESOLVED By the Montgomery Township Committee that the cash Performance Guarantee in the amount of \$2,200.00 be released to Renwood Princeton Self Storage LLC, Peabody Office Building, 2nd Floor, One Newberry Street, Peabody, MA 01960.

BE IT FURTHER RESOLVED That a Maintenance Guarantee is not required and there are no roads or detention basins associated with this project.

I. **TOWNSHIP COMMITTEE APPOINTMENT - Sourland Planning Smart Growth Steering Committee**

BE IT RESOLVED That Alan Bien is hereby appointed Sourland Planning Smart Growth Steering Committee Alternate Member, 1 year term expiring December 31, 2013.

7-1. Committeeman Smith moved the adoption of the **CONSENT AGENDA**. The motion was seconded by Committeewoman Madrid and carried on the following:

ROLL CALL - Ayes - Sugden, Madrid, Smith, Graham, Trzaska
Nays - None

8. **RESOLUTION #13-3-74 - TRANSFER OF FUNDS**

WHEREAS, There is a need to transfer funds to areas where there are insufficient funds to meet the demands of the Township, and

WHEREAS, There are sufficient funds to be transferred to those accounts as stated to meet the needs of the Township.

NOW, THEREFORE, BE IT RESOLVED, By the Township Committee of the Township of Montgomery, County of Somerset, State of New Jersey, that in accordance with the provisions of N.J.S.A. 40A:4-58 and N.J.S.A. 40A:4-59 hereby authorizes the Chief Finance Officer to make the following transfers for the 2012 Budget:

FROM	TO	AMOUNT
Special Projects (OE)		\$19,475.00
	Capital Improvement Fund (OE)	\$19,475.00

8-1. Committeeman Smith moved the adoption of the foregoing resolution. The motion was seconded by Committeeman Sugden and carried on the following:

ROLL CALL - Ayes - Sugden, Madrid, Smith, Graham, Trzaska
Nays - None

9. **RESOLUTION #13-3-75 - AUTHORIZING TEMPORARY EMERGENCY APPROPRIATIONS**

WHEREAS, The 2013 Municipal Budget has not been adopted and there is a need to increase the Temporary Budget prior to the 2013 Budget being adopted, in order to maintain operations until such time as the Township Budget is in place; and

WHEREAS, N.J.S.A. 40A:4-20 provides for approval of emergency temporary appropriations prior to the Municipal Budget being adopted, by a confirming vote of two-thirds of the full governing body.

NOW, THEREFORE, BE IT RESOLVED, By confirmation of two-thirds of the full governing body, that the Chief Finance Officer is authorized to increase the temporary emergency appropriations as follows:

Current Fund

Mayor and Council	
Other Expenses	\$2,000.00
Police	
Other Expenses	\$105,000.00
PFRS	
Other Expenses	\$672,724.00
PERS	
Other Expenses	\$589,850.00

Utility Fund

Capital Principal	
Other Expenses	(\$16,000.00)
Capital Interest	
Other Expenses	\$407,000.00
Capital Deferred Charge	
Other Expense	\$16,000.00
PERS	
Other Expenses	\$85,000.00

9-1. Deputy Mayor Graham moved the adoption of the foregoing resolution. The motion was seconded by Committeewoman Madrid and carried on the following:

ROLL CALL - Ayes - Sugden, Madrid, Smith, Graham, Trzaska
Nays - None

10. **ORDINANCE #13-1433 - Providing for a 3.5% CAP for the 2013 Budget - Introduction**

A. Mayor Trzaska read the title of the ordinance as follows:

ORDINANCE PROVIDING FOR A 3.5% "CAP" FOR THE
2013 BUDGET PURSUANT TO NJS 40A:4-45.14

B. BE IT RESOLVED By the Township Committee of the Township of Montgomery that the foregoing ordinance be hereby passed on first reading and that the same be published in an official newspaper as required by law together with a Notice of Pending Ordinance fixing March 21, 2013 at approximately 7:00 p.m. as the date and time when said ordinance will be further considered for final adoption.

10-1. Committeeman Smith moved the adoption of the foregoing resolution. The motion was seconded by Committeewoman Madrid and carried on the following:

ROLL CALL - Ayes - Sugden, Madrid, Smith, Graham, Trzaska
Nays - None

11. **APPROVAL OF MINUTES**

February 21, 2013
Minutes were approved as printed.

12. **PAYMENT OF BILLS**

WHEREAS, The Township Committee of the Township of Montgomery has received bills to be paid as listed; and

WHEREAS, The Chief Finance Officer and the Township Administrator have reviewed these bills and have certified that these bills represent goods and/or services received by the Township, that these are authorized and budgeted expenditures and that sufficient funds are available to pay these bills;

NOW, THEREFORE, BE IT RESOLVED By the Township Committee of the Township of Montgomery as follows:

1. That these bills are hereby authorized for payment; and
2. That checks in the proper amounts are prepared and that necessary bookkeeping entries are made; and
3. That the proper Township Officials are authorized to sign the checks.

12-1. Committeeman Sugden moved the adoption of the foregoing resolution. The motion was seconded by Committeeman Smith and carried on the following:

ROLL CALL - Ayes - Sugden, Madrid, Smith, Graham, Trzaska
Nays - None

13. **APPOINTING DONATO NIEMAN AS ACTING DEPUTY TOWNSHIP CLERK**

Administrator Nieman explained that Township Clerk Kukla would be out for an uncertain amount of time for a minor medical procedure and Deputy Township Clerk Crawford would be going out a few weeks after for a medical procedure. He would be running any meetings, should it be necessary.

13-1. **Motion #13-3-1** - Deputy Mayor Graham moved to appoint Donato Nieman as Acting Deputy Township Clerk. The motion was seconded by Committeewoman Madrid and carried unanimously.

14. **ENERGY AGGREGATION PUBLIC MEETING**

Mayor Trzaska reminded everyone that Gabel Associates would be holding an Energy Aggregation Public Meeting on March 14, 2013 at 7:00 p.m. in the Court Room of the Municipal Building.

15. **MILLSTONE FLOOD SEMINAR**

Administrator Nieman stated that he was contacted by the Millstone Flood Commission. They are asking if municipalities who are members would co-sponsor a Flood Mitigation and Hazard Reduction Seminar that is going to be held at Raritan Valley Community College on March 16, 2013 from 9:00 a.m. to 3:00 p.m. There is no money involved with Montgomery being a sponsor, but they wanted to be able to include the name as a sponsor.

15-1. **Motion #13-3-2** - Committeeman Sugden moved to approve Montgomery co-sponsoring the Flood Mitigation and Hazard Reduction Seminar to be held by the Millstone Flood Commission on March 16, 2013. The motion was seconded by Committeeman Smith and carried unanimously.

16. **UTILITY POLES**

Committeeman Smith stated that Robert Kress spoke at the February 21 Township Committee meeting about the utility poles. He felt that Mr. Kress was right about the visual impact on the utility poles in this Township. He wondered if the Township could get the utility company to consolidate or move the smaller poles.

Attorney Hadinger stated that she understood that there was supposed to be consolidation and then the other users of the poles are supposed to move. She explained that the Township would follow up and inquire about the double poles.

Administrator Nieman stated that he and the Mayor have been trying to set up a meeting with a representative of PSE&G regarding this issue.

ADJOURNMENT was at 8:29 p.m. on a motion by Committeeman Smith. The motion was seconded by Committeewoman Madrid and carried unanimously.

Date of Approval:

Donna Kukla, Township Clerk