

MINUTES FOR
MONTGOMERY TOWNSHIP COMMITTEE
August 7, 2008

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 Birge, Deputy Mayor Fay, Committeeman Caliguire
Committeemembers Wilson and Joye were absent

Also present were:

TOWNSHIP ATTORNEY - Paul Adezio, Esq.

TEMPORARY CHIEF FINANCIAL OFFICER - Walter Sheppard

TOWNSHIP CLERK - Donna Kukla

ASSISTANT TOWNSHIP ENGINEER - Hongdar Chi (Items #6 and #9)

2. Mayor Birge 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 Birge led the salute to the flag.

4. **PUBLIC COMMENT**

There being no comment, Mayor Birge closed the public comment portion of the meeting.

5. **RECREATION BACKGROUND CHECKS ORDINANCE**

Mayor Birge explained a memo that was received that explained a change by the State regarding Recreation Program Background checks.

- 5-1. **Motion #08-8-1** - Committeeman Caliguire moved to suspend the use of the ordinance until the State allows this to be done. The motion was seconded by Deputy Mayor Fay and carried unanimously.

6. **RESOLUTION #08-8-234 - APPROVING PROFESSIONAL ENGINEERING SERVICES AGREEMENT - NPDC Wastewater Treatment Plan Upgrade - Omni Environmental**

WHEREAS, The Township of Montgomery seeks to retain the services of a Professional Environmental Consultant related to the NPDC Wastewater Treatment Plant Upgrade; and

WHEREAS, The Township has a need to acquire these services without a "fair and open process" as defined by P.L. 2004, c.19, the "Local Unit Pay-to-Play Law", and Omni Environmental has completed and filed with the Township a Campaign Contributions Affidavit as required by N.J.S.A. 19:44A-20.2 et seq. certifying that Omni Environmental has not made any prohibited contributions to a candidate committee or municipal committee representing the elected officials of the Township, along with a Certification Regarding Political Contributions as required by N.J.S.A. 19:44A-20.26 and an Affidavit Prerequisite to Execution of Agreement Exempt from Public Bidding and in Excess of \$5,000.00 as required by Subsection 2-22.2 of the Code of the Township of Montgomery (1984) (collectively "Pay-to-Play Forms"); and

WHEREAS, On March 6, 2008, the Township Committee determined that Omni Environmental will provide those services in stages and authorized Omni Environmental to undertake Task I (Alternative Evaluation/Facility Plan) for a not to exceed cost of \$39,300.00; and

WHEREAS, Task I has been completed and the Township Committee seeks to have the remaining tasks 2-7 completed for a not to exceed cost of \$658,700.00; and

WHEREAS, The Township Administrator has determined and certified in writing that the value of the acquisition over the course of the contract is anticipated to exceed \$17,500.00; and

WHEREAS, The New Jersey Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., authorizes the award of this contract as "professional services" without competitive bidding; and

WHEREAS, The Temporary Chief Financial Officer has certified that sufficient funds are available for this purpose.

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

1. The Mayor and Clerk are authorized and directed to execute an agreement with Omni Environmental to provide professional engineering services with respect to services related to the NPDC Wastewater Treatment Plant Upgrade.
2. Omni Environmental shall be paid a not to exceed total cost of \$658,700.00 to complete the remaining tasks. The contract amount may be amended by change order, as permitted by law.
3. A copy of this Resolution, the Certification of Contract Value, the September 24, 2007 proposal, the Pay-to-Play Forms and the agreement shall be placed on file in the Office of the Township Clerk, and shall be available for public inspection.
4. A notice of this action shall be published in the official newspaper as required by law.

(Item #6 Cont.)

- 6-1. Committeeman Caliguire asked why the proposal was only sent to two contractors.

Assistant Township Engineer Hongdar Chi explained that these two contractors were used by the Township and knew what was required and the time constraints.

Jim Cosgrove, Omni Environmental representative, explained the process of infrastructure estimates.

- 6-2. Deputy Mayor Fay moved the adoption of the foregoing resolution. The motion was seconded by Mayor Birge and carried on the following:

ROLL CALL: Ayes - Fay, Birge
Nays - Caliguire
Absent - Wilson, Joye

7. **SOMERSET COUNTY BUSINESS PARTNERSHIP'S BUSINESS RETENTION REPORT**

John Maddocks and Jim Gabriel, Somerset County Business Partnership representatives, gave the background of the survey and an overview of the report which came out of the survey. They stated that Carrier Foundation had a need for public transportation for lower wage workers.

Walter Geslak, Economic Development Commission Chairman, explained that the Economic Development Commission would like to do a formal presentation of the report to the businesses in the Township. He stated that there had been a proposal to start an Economic Development Commission website at no cost to the Township. They are planning on bringing this to a future Township Committee meeting for Committee approval.

- 7-1. **Motion #08-8-2** - Deputy Mayor Fay moved to formally accept the Somerset County Business Partnership's Business Retention Outreach Report. The motion was seconded by Committeeman Caliguire and carried unanimously.

8. **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 #08-8-235 - REFUND OVERPAID 2008 SEWER PAYMENT**

BE IT RESOLVED That a refund in the amount of \$25.64 be given to Dumont & Watson, 220 Alexander Street, P.O. Box 3349, Princeton, NJ 08543-3349 for the overpayment of 2008 sewer payment on Block 5018, Lot 126.1 Condo.

B. **RESOLUTION #08-8-236 - RAFFLE LICENSE #654 - Princeton Elks #2129 Ladies Auxiliary**

BE IT RESOLVED By the Montgomery Township Committee that approval is hereby given for the Princeton Elks #2129 Ladies Auxiliary to conduct a Raffle under License #654 on October 21, 2008 at Lodge Home, Route 518, Blawenburg, NJ. The time for this Raffle will be from approximately 6:00 p.m. to 10:00 p.m.

C. **RESOLUTION #08-8-237 - RAFFLE LICENSES #655 and #656 - BPO Elks, Princeton Lodge #2129**

BE IT RESOLVED By the Montgomery Township Committee that approval is hereby given for the BPO Elks, Princeton Lodge #2129 to conduct a Raffles under Licenses #655 and #656 on September 13, 2008 and September 26, 2008 at Lodge Home, Route 518, Blawenburg, NJ. The time for these Raffles will be from approximately 7:30 p.m. to 10:30 p.m.

D. **RESOLUTION #08-8-239 - AUTHORIZING THE EXECUTION OF A SHARED SERVICES AGREEMENT, PURSUANT TO N.J.S.A. 40A:65-1, et seq., WITH EAST AMWELL TOWNSHIP FOR THE RECONSTRUCTION OF SPRING HILL ROAD.**

WHEREAS, Spring Hill Road is a border road between the Township of Montgomery in Somerset County and the Township of East Amwell in Hunterdon County; and

WHEREAS, It has been determined that the interests of the health, safety, and welfare of Montgomery and East Amwell Townships would be served by the reconstruction of Spring Hill Road and the installation of related drainage improvements; and

WHEREAS, To effectuate the reconstruction of Spring Hill Road the governing bodies of Montgomery and East Amwell Townships desire to execute a shared services agreement pursuant to N.J.S.A. 40A:65-1, et seq.; and

WHEREAS, A shared services agreement, setting forth the rights and responsibilities of Montgomery and East Amwell Townships, entitled "Interlocal Services Agreement for the Reconstruction of Spring Hill Road with the Installation of Drainage Improvements," has been prepared and circulated for approval by the governing bodies of Montgomery and East Amwell Townships;

NOW, THEREFORE, BE IT RESOLVED, By the Township Committee of the Township of Montgomery, County of Somerset, New Jersey, that the Township Committee approves the Township's participation in the shared services agreement with the Township of East Amwell for the reconstruction of Spring Hill Road and the installation of related drainage improvements; and further that the Mayor and Clerk are authorized and directed to execute the shared services agreement entitled "Interlocal Services Agreement for the Reconstruction of Spring Hill Road with the Installation of Drainage Improvements;" and

(CONSENT AGENDA Item D Cont.)

FURTHER, BE IT RESOLVED, By the Township Committee that a copy of the shared services agreement entitled "Interlocal Services Agreement for the Reconstruction of Spring Hill Road with the Installation of Drainage Improvements" will be available, pursuant to N.J.S.A. 40A:65-5.b., at the offices of the Township Clerk for public inspection.

E. **RESOLUTION #08-8-240 - ENDORSING THE APPLICATION TO DIVERT PARKLAND; NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION GREEN ACRES DIVISION; BLOCK 4001, LOTS 10.01, 10.02 and 10.03. - Transco**

WHEREAS, Transcontinental Gas Pipe Line Corporation (hereinafter "Transco") has applied for the requisite Federal approval (State and Municipal approvals being inapplicable except as hereinafter recited) to permit the construction of a new underground natural gas pipeline, which will be adjacent to a portion of Transco's existing natural gas pipeline running through the Township of Montgomery (the "Township"); and

WHEREAS, Various Township representatives have met informally with Transco personnel in order to obtain information about possible alignments for the said pipeline, certain of which possible alignments cross property on which the Township holds a conservation easement, and necessitate the acquisition of an easement by Transco from the Township for a permanent right-of-way and temporary work space; and

WHEREAS, The proposed route traverses a parcel of land owned in fee by Theodore H. Pedersen, across which the Township holds a Conservation, Agricultural and Public Pathway Easement, located at 421 Belle Mead Blawenburg Road (County Route 601) about 100 feet north of the 3M railroad spur, also known and identified as Block 4001, Lots 10.01, 10.02 and 10.03 in the Township of Montgomery, County of Somerset ("the Property"); and

WHEREAS, Portions of the Property are encumbered with restrictions against disposal or diversion from recreation and conservation uses in accordance with the New Jersey Department of Environmental Protection, Green Acres Program, rules and regulations (N.J.S.A. 13:8A-1 et seq. and N.J.A.C. 7:36-1.1 et seq.); and

WHEREAS, The rules and regulations promulgated by the New Jersey Department of Environmental Protection, Green Acres Program, require that the Green Acres Bureau of Legal Services & Compliance Section and State House Commission be notified of and approve the diversion of the Green Acres encumbered properties, and approve the grant of an easement for said pipeline through the Green Acres property; and

WHEREAS, It is necessary, as an initial part of the formal diversion process, to submit a resolution affirming the Township of Montgomery's willingness to consider the proposal to divert a certain portion of Block 4001, Lots 10.01, 10.02, and 10.03 in the Township of Montgomery, County of Somerset; and

WHEREAS, Transco is required under Green Acres regulations to compensate the Township for the proposed diversion, either through monetary compensation or replacement land; and

WHEREAS, A scoping hearing concerning this matter was held on January 16, 2008 in the Township of Montgomery, in accordance with Green Acres Program regulations found at N.J.A.C. 7:36-26.8(a); and

WHEREAS, All appropriate parties and property owners required to be notified of the scoping hearing as to the proposed diversion were so notified according to applicable regulations; and

WHEREAS, A pre-application conference has already been held among representatives of the Township, Transco, and the Green Acres Program staff; and

WHEREAS, The Montgomery Township Committee, by its staff, has carefully considered and reviewed the information now available regarding the proposed pipeline alignments, including any effects of construction upon the residents of the Township of Montgomery; and

WHEREAS, The Montgomery Township Committee is satisfied that one alignment for the pipeline is the route proposed by Transco alongside its existing pipeline through Block 4001, Lots 9, 10.01, 10.02 and 10.03 in the Township of Montgomery, County of Somerset, as shown on the attached drawings;

NOW THEREFORE BE IT RESOLVED By the Township Committee that the Township Committee will continue to seriously study and entertain the proposal to divert certain portions of Block 4001, Lots 10.01, 10.02 and 10.03 in the Township of Montgomery, County of Somerset while continuing to review possible modifications to that route; and

BE IT FURTHER RESOLVED That the appropriate Township officers be and hereby are authorized to immediately submit to the Green Acres Program a complete final application for the diversion for review and approval by the Green Acres staff; and

BE IT FURTHER RESOLVED That the appropriate Township officers are authorized to meet and discuss the details of the application with the representatives of Transco and Green Acres and to render any assistance as may be required in connection with the final application procedure; and

(CONSENT AGENDA Item E Cont.)

BE IT FURTHER RESOLVED That the Township will continue to pursue adequate compensation/replacement land from Transco for the proposed diversion of Township property; and

BE IT FURTHER RESOLVED That any final agreement by which the Township Committee consents to the acquisition of easements by Transco across Block 4001, Lots 10.01, 10.02 and 10.03, must be approved by further formal action of the Township Committee.

BE IT FURTHER RESOLVED That the Clerk of the Township of Montgomery shall forward certified copies of this resolution to the New Jersey Department of Environmental Protection, Green Acres Program, and to Transco.

F. **RESOLUTION #08-8-241 - AUTHORIZATION TO ENTER INTO A GRANT AGREEMENT WITH THE STATE AGRICULTURE DEVELOPMENT COMMITTEE ("SADC") AND SOMERSET COUNTY FOR FUNDING OF BLOCK 34001 LOT 43.05 (DONALD DRAKE PROPERTY)**

WHEREAS, The Township of Montgomery has applied to the State Agriculture Development Committee ("SADC") and Somerset County for funding in connection with the acquisition of an agricultural easement on a portion of the property known as Block 34001, Lot 43.05 on the Township Tax Assessment Maps (rev. ed. 2005), also known as the "Donald Drake Property";

WHEREAS, The SADC, certified a Fair Market Value on January 25, 2007 and the Township of Montgomery accepted the Fair Market Value on May 16, 2007 (Resolution #07-5-123):

WHEREAS, The Township purchased an agricultural easement on the Donald Drake Property on June 5, 2007 (filed in the Somerset County Clerk's Office, deed Book 6035, pages 2363-2379);

WHEREAS, The SADC has authorized a grant of \$1,569,442.10 (59.90% of the SADC certified value) in reimbursement funds to the Township;

WHEREAS, Somerset County has authorized a grant of approximately 20% of the SADC certified value in reimbursement funds to the Township;

BE IT RESOLVED By the Township Committee of the Township of Montgomery, Somerset County, New Jersey as follows:

1. Mayor Cecilia Birge is authorized to sign a grant agreement with the SADC;
2. Mayor Cecilia Birge is authorized to sign a grant agreement with Somerset County;
3. A copy of this resolution shall be sent to the Somerset County Agriculture Development Board (CADB), and State Agriculture Development Committee (SADC).

G. **RESOLUTION #08-8-242 - APPROVING PROFESSIONAL SERVICES AGREEMENT - Omni Environmental - Preparation of New Jersey Environmental Infrastructure Financing Program Documents - Pike Brook Wastewater Treatment Plant**

WHEREAS, The Township of Montgomery seeks to retain the services of a professional environmental consultant for preparation of New Jersey Environmental Infrastructure Financing Program documents for the Pike Brook Wastewater Treatment Plant; and

WHEREAS, The Township has a need to acquire these services without a "fair and open process" as defined by P.L. 2004, c.19, the "Local Unit Pay-to-Play Law", and Omni Environmental has completed and filed with the Township a Campaign Contributions Affidavit as required by N.J.S.A. 19:44A-20.2 et seq. certifying that Omni Environmental has not made any prohibited contributions to a candidate committee or municipal committee representing the elected officials of the Township, along with a Certification Regarding Political Contributions as required by N.J.S.A. 19:44A-20.26 and an Affidavit Prerequisite to Execution of Agreement Exempt from Public Bidding and in Excess of \$5,000.00 as required by Subsection 2-22.2 of the Code of the Township of Montgomery (1984) (collectively "Pay-to-Play Forms"); and

WHEREAS, The firm of Omni Environmental has submitted a proposal dated June 4, 2008 to provide the sought-after services to the Township for the lump sum cost of \$78,300.00; and

WHEREAS, The Township Administrator has determined and certified in writing that the value of the acquisition over the course of the contract is anticipated to exceed \$17,500.00; and

WHEREAS, The New Jersey Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., authorizes the award of this contract as "professional services" without competitive bidding; and

WHEREAS, The Temporary Chief Financial Officer has certified that sufficient funds are available for this purpose.

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

(CONSENT AGENDA Item G Cont.)

1. The Mayor and Clerk are authorized and directed to execute an agreement with Omni Environmental to provide professional environmental services with respect to preparation of New Jersey Environmental Infrastructure Financing Program documents.
2. Omni Environmental shall be paid a total lump sum fee of \$78,300.00 for its professional services. The contract amount may be amended by change order, as permitted by law. The term of the agreement shall terminate one year after its execution or upon completion of the services, whichever occurs sooner.
3. A copy of this Resolution, the Certification of Contract Value, the June 4, 2008 proposal, the Pay-to-Play Forms and the agreement shall be placed on file in the Office of the Township Clerk, and shall be available for public inspection.
4. A notice of this action shall be published in the official newspaper as required by law.

H. **RESOLUTION #08-8-244 - AUTHORIZING THE EXECUTION OF A RELEASE IN FAVOR OF THE MUNICIPAL EXCESS JOINT LIABILITY INSURANCE FUND - Brahaney, et al. vs. Montgomery Township Planning Board, et al. (\$6,500.00 Consideration to the Township)**

WHEREAS, The Township of Montgomery ("Township") and the Township's Planning Board have been named defendants in certain litigation encaptioned Brahaney, et al. v. Montgomery Township Planning Board, et al., Somerset County Superior Court, Docket No. SOM-L-47-08, concerning a development application decided by the Planning Board; and

WHEREAS, The Township is provided with liability coverage by and through its membership in the Municipal Excess Joint Liability Insurance Fund ("JIF"); and

WHEREAS, The JIF has advised the Township that, due to the nature of the claims in the subject litigation, and the exclusions contained within the insurance coverage provided to the Township, the JIF will not extend coverage to the Township regarding this lawsuit; and

WHEREAS, Notwithstanding that position, the JIF has offered the Township the sum of \$6,500.00 in consideration for the Township releasing any claims that the Township may have against the JIF regarding said insurance coverage for the claims made in the Brahaney litigation; and

WHEREAS, It is in the best interests of the citizens of the Township to accept the \$6,500.00 figure, and release the JIF from any responsibility it may have for coverage of the Township's interests in the Brahaney litigation.

NOW, THEREFORE, BE IT RESOLVED By the Township Committee of the Township of Montgomery, County of Somerset, New Jersey that the proper officials of the Township be and hereby are authorized to execute a Release, in a form approved by the Township Attorney, in favor of the Municipal Excess Joint Liability Insurance Fund concerning the Brahaney, et al. v. Montgomery Township Planning Board, et al., litigation, Somerset County Superior Court Docket No. SOM-L-47-08, in exchange for consideration of \$6,500.00 payable to the Township.

- 8-1. Committeeman Caliguire moved the adoption of the **CONSENT AGENDA**. The motion was seconded by Deputy Mayor Fay and carried on the following:

ROLL CALL: Ayes - Fay, Caliguire, Birge
Nays - None
Absent - Wilson, Joye

9. **RESOLUTION #08-8-243 - RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MONTGOMERY AWARDING A CONTRACT FOR ROADWAY RECONSTRUCTION AND DRAINAGE IMPROVEMENTS AT SPRING HILL ROAD**

WHEREAS, Pursuant to the Local Public Contracts Law (N.J.S.A. 40A:11-1 *et seq.*) the Township of Montgomery solicited bids for roadway reconstruction and drainage improvements at Spring Hill Road ("Spring Hill Road Improvements"); and

WHEREAS, On June 27, 2008, the following bids were received:

<u>Contractor</u>	<u>Bid</u>
Lucas Brothers, Inc.	\$1,996,334.66
Intercounty Paving Association	\$2,498,894.00
Jogi Construction	\$2,500,247.35
Top Line Construction	\$2,719,639.04
Aponte Construction Company	\$3,295,368.90
PMC Company, Inc.	\$3,754,645.10

WHEREAS, Lucas Brothers Inc. has sought to withdraw their bid due to alleged errors in computing said bid; and

WHEREAS, The Township Engineer and Township Attorney concur in said withdrawal; and

WHEREAS, Intercounty Paving Associates, LLC ("Intercounty Paving"), with a bid in the amount of \$2,498,894.00 is consequently the next lowest responsible bidder; and

(Item #9 Cont.)

WHEREAS, The Township desires to award the contract for Spring Hill Road Improvements to Intercounty Paving; and

WHEREAS, The Chief Financial Officer has certified that sufficient funds are available for the award of the contract to the said contractor.

NOW THEREFORE BE IT RESOLVED By the Township Committee of the Township of Montgomery, in Somerset County, New Jersey, as follows:

1. The contract for the Spring Hill Road Improvements is hereby awarded to Intercounty Paving.
1. The Mayor and Township Clerk are hereby authorized and directed to enter into a contract with said contractor consistent herewith.
- 9-1. Committeeman Caliguire voiced his concerns and displeasure about passing this resolution.
- 9-2. Frank Drift, Sunset Road, suggested that Committee take a chance and wait on this project until the prices come down.
- 9-3. Assistant Township Engineer Hongdar Chi stated that there is local aid money in the amount of \$200,000 for Montgomery, and \$120,000 for East Amwell at stake. He explained the price comparison in the asphalt.
- 9-4. Deputy Mayor Fay moved the adoption of the foregoing resolution. The motion was seconded by Mayor Birge and carried on the following:

ROLL CALL: Ayes - Fay, Birge
Nays - Caliguire
Absent - Wilson, Joye

10. **RESOLUTION #08-8-238 - INTERLOCAL GOVERNMENT SERVICES AGREEMENT - Kid Connection**

WHEREAS, The Township of Montgomery ("Township") operates Montgomery Kid Connection, which is a private, non-profit school program sponsored by the Township; and

WHEREAS, It has been determined that the most cost effective and convenient method for conducting classes was through the use of shared services with the Township's Board of Education ("Board") by using an Interlocal Agreement; and

WHEREAS, The Uniform Shared Services and Consolidation Act (N.J.S.A.40A:65-1, *et seq.*) authorizes and empowers the Township and the Board to enter into this agreement; and

WHEREAS, The Township desires to utilize five (5) classrooms of the Board, free of charge, in exchange for providing the Board with In Class Support ("ICS") and

WHEREAS, The classrooms are to be used for conducting classes as part of the Kid Connection Program; and

WHEREAS, The Township and the Board have each adopted Resolutions authorizing the execution of this Interlocal Government Services Agreement.

NOW, THEREFORE, BE IT RESOLVED That for and in consideration of the promises and agreement hereinafter contained, the parties agree as follows:

2. The Board agrees to provide to the Township with the use of five (5) classrooms for the purpose of conducting classes as part of the Kid Connection Program.
 2. The Board agrees to provide such facilities at no cost to the Township.
 3. The Township agrees to provide "ICS" placement to the Board in exchange for the use of the Board's facilities.
 4. The supervisors of the Kid Connection Program are authorized to send students to the school nurse in emergency situations, including but not limited to, when a student needs medication that cannot be kept in the class room, when the student has been seriously injured, or is in pain, or when the child is bleeding profusely.
 5. The parties shall mutually indemnify and hold harmless each other and all representatives thereof, including the school nurse, Pamela Schrum, from and against any and all claims, damages, losses and expenses to the extent caused by the parties negligent acts, errors, intentional acts or omissions in the performance of its professional services under this Agreement.
 6. The parties shall not assign, transfer, sublet, or otherwise dispose of this Agreement or any right or responsibility hereunder, without previous consent in writing by the Township and the Board. Consent by the Township and the Board of an assignment of this Agreement shall not, in any way, release the parties from their covenants, conditions and terms of this Agreement and the duties imposed hereunder.
- 10-1. Deputy Mayor Fay moved the adoption of the foregoing resolution. The motion was seconded by Committeeman Caliguire and carried on the following:

ROLL CALL: Ayes - Fay, Caliguire
Nays - None
Absent - Wilson, Joye
Abstain - Birge

11. **RESOLUTION #08-8-245 - AUTHORIZING THE SALE OF TWO (2) PLENARY RETAIL CONSUMPTION LICENSES; \$500,000.00 MINIMUM BID PER LICENSE.**

WHEREAS, *N.J.S.A.* 33:1-12.14 provides that no new Plenary Retail Consumption Liquor License shall be issued in a municipality unless and until the number of such licenses existing in the municipality is fewer than one for each 3,000 of its population as shown on the last preceding Federal Census; and

WHEREAS, The 2000 Federal Census determined that the population of the Township of Montgomery ("Township") exceeds 17,000 persons; and

WHEREAS, Pursuant to *N.J.S.A.* 33:1-1 *et seq.* and Chapter VI of the Code of the Township of Montgomery (1984), and the 2000 Federal Census results, the Township is authorized to issue two (2) new Plenary Retail Consumption liquor licenses; and

WHEREAS, It is in the interests of the Township to permit the issuance of two (2) additional Plenary Retail Consumption liquor licenses.

NOW, THEREFORE, BE IT RESOLVED By the Township Committee of the Township of Montgomery, County of Somerset, New Jersey as follows:

1. The Township hereby determines that it will sell at public sale two (2) Plenary Retail Consumption Licenses for the sale of alcoholic beverages, in accordance with the procedures set forth in *N.J.S.A.* 33:1-19.3 *et seq.*
2. The Township Clerk shall publish a notice of the public sale and an invitation to bid in the official newspaper of the Township at least two times, the notices to be published at least one week apart, the second of which shall be published at least thirty (30) days prior to the date after which no further applications shall be accepted. Nothing herein shall preclude the Township Clerk from publishing additional newspaper or alternative notices, provided the publication requirements set forth above are satisfied.
3. The following conditions shall apply to the award and issuance of each license:
 - a. Each license shall be used in conjunction with a restaurant, which is defined by the Alcoholic Beverage Control Act, *N.J.S.A.* 33:1-1(t) as "an establishment regularly and principally used for the purposes of providing meals to the public, having an adequate kitchen and dining room equipped for preparing, cooking and serving of food for its customers and in which no other business, except such as incidental to such establishment, is conducted." Said restaurant shall have seating for a minimum of one hundred (100) persons.
 - b. The premises on which the licensee operates may be (1) an existing restaurant, (2) an existing building in which such use is a permitted use, or (3) a site which has or may receive preliminary and final site plan approval (within the time period required for license issuance set forth in paragraph 10 below) from the Township Planning Board.
 - c. The premises on which the licensee operates must comply with all Township zoning regulations and New Jersey Municipal Land Use Law, *N.J.S.A.* 40:55D-1 *et seq.*
 - d. The minimum bid that shall be considered for each license shall be \$500,000.00.
 - e. Prospective bidders must be pre-qualified, and only the bids of qualified bidders will be opened.
 - f. To pre-qualify, a prospective bidder must submit the following to the Township Clerk at the Township Municipal Building at 2261 Van Horne Road, Belle Mead, New Jersey 08502, on or before 10:00 a.m. on September 26, 2008:
 - (1) A full and complete twelve-page Alcoholic Beverage Control Application form.
 - (2) A separate certification of proof of compliance by the applicant that it meets any and all conditions or requirements contained in this resolution, including that the license will be used in conjunction with a restaurant having seating for a minimum of one hundred (100) persons, and knows of no other reason why he or she would be disqualified from having an interest in a Retail Liquor License in the State of New Jersey under the standards set forth in the Alcoholic Beverage Control Act and the rules and regulations promulgated thereunder.
 - (3) The remittance of a deposit in the amount of \$50,000.00 (10% of minimum bid amount) per license by certified check, made payable to the "Township of Montgomery."
 - (4) A separately sealed opaque envelope containing the bid amount, the outside of which shall state "2008 Retail Consumption Liquor License Bid" and the name of the bidder.
 - (5) Bidders may bid on more than one license but must submit a separate bid and separate bid package for each license.

(Item #11 Cont.)

4. At 10:00 a.m. on October 10, 2008, the Township Clerk shall publicly announce those prospective bidders who have pre-qualified for bidding in compliance with the Alcoholic Beverage Control Act, and the rules and regulations promulgated thereunder, Township ordinances, the conditions set forth in the published notices, and other applicable law. A list of such pre-qualified bidders shall be posted on the public announcements bulletin board in the Township Municipal Building, 2261 Van Horne Road, Belle Mead, New Jersey 08502.
5. The Township Clerk shall open the bids of the pre-qualified bidders at 10:00 a.m. on October 20, 2008 at the Township Municipal Building, 2261 Van Horne Road, Belle Mead, New Jersey 08502. Immediately after opening the sealed bids of the pre-qualified bidders, the Township Clerk shall publicly announce the amount of each bid and the name of each bidder.
6. The Township Committee, by written resolution, adopted at the public meeting on November 6, 2008, or shortly thereafter, shall award the licenses to the highest bidders, if the Township does not reject all bids. If the award is made to the highest qualified bidders, the ultimate issuance of the licenses shall be subject to each of the following:
 - a. Payment of the balance of the bid for the licenses by certified check made payable to "Township of Montgomery" within five days of the date of the resolution of the Township Committee awarding the license. Failure to make timely payment of the balance shall, at the option of the Township, result in voiding of the license award and forfeiture of the successful bidder's deposit whereupon the Township may award the license to the next highest qualified bidder or take no further action.
 - b. Payment by the successful bidder of the New Jersey State License Application Fee for each license.
 - c. Payment of the Annual Municipal Retail License Fee for each license.
 - d. Satisfactory outcome of further municipal background checks to investigate the source of funds used to purchase each license.
 - e. Receipt of favorable State and/or Federal criminal background checks for each prospective licensee.
 - f. Compliance with publication, hearing and resolution requirements under *N.J.A.C. 13:2-2.1 et seq.*
7. The deposit of all unsuccessful bidder(s) shall be returned within ten days of the date of the award of the license(s).
8. The Township reserves the right to reject all bids where the highest qualified bid is not accepted.
9. The sale may be postponed or cancelled at any time prior to the opening of the bids.
10. If the licenses have not been issued pursuant to this resolution by March 26, 2009, no license shall thereafter be issued without further resolution by the Township Committee, determining to issue a new license.
11. The successful bidder shall comply with all other provisions of *N.J.A.C.13:2-2.1 et seq.*, including, but not limited to, publication of notice of application.

11-1. Cory Wingerter, Tiger's Tale, asked why the Township was putting the price so low for the licenses and stated that he thought the price should be a little bit higher.

Mayor Birge responded that the Township had recently put another license out to bid, and no one bid on it at the price set.

11-2. Frank Drift, Sunset Road, stated he thought the Township was selling this asset for half of what it is worth.

11-3. Committeeman Caliguire moved the adoption of the foregoing resolution. The motion was seconded by Deputy Mayor Fay and carried on the following:

ROLL CALL: Ayes - Fay, Caliguire, Birge
Nays - None
Absent - Wilson, Joye

12. **ORDINANCE #08-1295 - BOND - Various Capital Acquisitions - Public Hearing**

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

BOND ORDINANCE PROVIDING FOR CARIOUS CAPITAL ACQUISITIONS IN AND FOR THE TOWNSHIP OF MONTGOMERY, IN THE COUNTY OF SOMERSET, NEW JERSEY, APPROPRIATING \$544,000 THEREFOR, AND AUTHORIZING THE ISSUANCE OF \$516,800 BONDS OR NOTES OF THE TOWNSHIP TO FINANCE PART OF THE COST THEREOF.

B. BE IT RESOLVED By the Montgomery Township Committee that the foregoing ordinance be hereby postponed to August 28, 2008.

12-1. Committeeman Caliguire moved the adoption of the foregoing resolution. The motion was seconded by Deputy Mayor Fay and carried on the following:

ROLL CALL: Ayes - Fay, Caliguire, Birge
Nays - None
Absent - Wilson, Joye

13. ORDINANCE #08-1296 - Wismer Donation (Block 27001, Lot 19) - Introduction

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

AN ORDINANCE OF THE TOWNSHIP OF MONTGOMERY IN SOMERSET COUNTY,
NEW JERSEY AUTHORIZING THE ACQUISITION OF A PORTION OF
BLOCK 27001, LOT 19 LOCATED ON OPOSSUM ROAD PURSUANT TO
N.J.S.A. 40A:12-5

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 August 28, 2008 at approximately 7:00 p.m. as the date and time when said ordinance will be further considered for final adoption.

13-1. Committeeman Caliguire moved the adoption of the foregoing resolution. The motion was seconded by Deputy Mayor Fay and carried on the following:

ROLL CALL: Ayes - Fay, Caliguire, Birge
Nays - None
Absent - Wilson, Joye

14. APPROVAL OF MINUTES

Committeeman Caliguire moved the adoption of the Regular Session minutes of April 17, 2008. The motion was seconded by Deputy Mayor Fay and carried unanimously.

15. PAYMENT OF BILLS

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

WHEREAS, The Temporary Chief Financial 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.

15-1. Deputy Mayor Fay moved the adoption of the foregoing resolution. The motion was seconded by Committeeman Caliguire and carried on the following:

ROLL CALL: Ayes - Fay, Caliguire, Birge
Nays - None
Absent - Wilson, Joye

16. SEPTIC MANAGEMENT PROGRAM

Frank Drift, Sunset Road, spoke about the septic maintenance program. He objected to the permit fee for the inspection of the risers and lids on septic systems.

Deputy Mayor Fay asked how many riser and lid permits are issued per year.

Mr. Drift responded that he approximated 70 to 80 permits per year were issued.

Mayor Birge suggested that Mr. Drift talk to Health Officer Stephanie Carey.

ADJOURNMENT was at 8:40 p.m. on a motion by Deputy Mayor Fay, seconded by Committeeman Caliguire and carried unanimously.

Date of Approval:

Donna Kukla, Township Clerk