

MINUTES FOR  
MONTGOMERY TOWNSHIP COMMITTEE MEETING  
October 15, 2009

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 Wilson, Deputy Mayor Birge, Committeemembers Caliguire, Fay and Dyer

Also present were:

TOWNSHIP ATTORNEY - Kristina P. Hadinger, Esq.

TOWNSHIP ADMINISTRATOR - Donato Nieman

TEMPORARY CHIEF FINANCIAL OFFICER - Walter Sheppard

TOWNSHIP CLERK - Donna Kukla

2. Mayor Wilson 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 Wilson led the Salute to the Flag.

4. **POLICE REPORT**

Police Director Palmer reported on the following activities of the Police Department for the month of September, 2009:

- 54 motor vehicle accidents;
- 23 arrests;
- 11 thefts;
- 1 burglary;
- 3 domestic violence;
- 6 criminal mischief.

5. **SKILLMAN VILLAGE AFFORDABLE HOUSING**

- 5-1. Dave Bekus, Hunt Lane, expressed his concerns regarding COAH units in Skillman Village. He stated Skillman Village is an inappropriate spot for any COAH housing because it will jeopardize the on-going negotiations with the County to purchase the land and use it as a park. He stated that it was his opinion that COAH is an awful program.
- 5-2. Mayor Wilson explained that part of COAH's rules stipulate that if COAH units are located on land that is in public ownership, those units may be limited to affordable, low and moderate income residences. Most of the units in the plan, 274 units, are designated for properties within the Route 206 corridor in the southern part of the Township between Orchard Road and Cherry Valley Road. She explained how 77 units assigned to Skillman Village could translate to thousands of unwanted units in the Township. If an objector successfully challenges the Township's plan and demonstrates to the Council on Affordable Housing, in mediation prior to COAH certification, that there is not a reasonable expectation that any one part of the Township's plan could or would be carried out, then COAH would likely negate the whole plan, and the Township would lose its legal shield against builder's remedy lawsuits.
- 5-3. Attorney Hadinger explained that there are opportunities to amend the plan, if the Township chooses to do so after it obtains certification. The rules of COAH have changed vastly since the second round rules. The Township joined forces with approximately 20 other towns similarly situated led by some towns in Hunterdon and Somerset Counties, in a lawsuit filed by Stuart Koenig, a well known expert in the field. The Township also joined forces with the New Jersey State League of Municipalities in a lawsuit. The oral arguments in those lawsuits is set for December 1, 2009. It is possible that once a decision is rendered the rules will change. The Township is trying to live within the rules in order to preserve the Township's options as best as possible.
- 5-4. Bob Melhorn, Belle Mead, agreed with Mr. Bekus but stated that getting rid of COAH was not a reality.
- 5-5. Rick Cavalli, Cairns Place, stated that he understood the multiplier effect about building on municipal land versus private land.
- 5-6. Committeeman Caliguire stated that he didn't think the Township had to make a choice between 77 units in Skillman Village and 3,000 elsewhere in Township. We do, under the COAH regulations, have the ability to amend the plan even before certification and after certification, and there must be a viable alternative. We are currently in negotiations with the County over the purchase of Skillman Village. He stated that he voted against the COAH plan, and felt that it is a potential wrench in any deal with the County.
- 5-7. Richard Hansen, Orchard Road, congratulated the Township Committee on their hard work on this issue. He spoke about the traffic problems on Orchard Road and stated that any housing units at Skillman Village would create more traffic on that already overburdened road. He also mentioned the costs associated with building more schools or renovating existing schools.
- 5-8. Attorney Hadinger explained that the rules are likely to change again once some of the litigation is heard, so all of the ideas that people have expressed were being taken into consideration. She stated, from a legal standpoint, that the process continues to evolve. There is not a final answer on anything right now. The rules are under challenge, the court cases may successfully over-turn these rules. There has been talk in the legislature about abolishing COAH, which may change the rules of the game. However there still is, according to the Supreme Court, a constitutional obligation to provide low and moderate housing.

(Item #5 Cont.)

- 5-9. Sonia Cavalli, Cairns Place, spoke about COAH and the whole "Not In My Backyard" attitude she has been hearing. She stated that she supported the current plan and was concerned about people opposing this without putting their plan on the table. She was unwilling to support any other plan until it is spelled out as succinctly as the current plan.
- 5-10. Mayor Wilson stated that the plan was crafted very carefully with a few primary overriding objectives: to protect the Township against lawsuits, to minimize the number of new residential units required, and to locate units within walking distance of jobs, stores and transit, to the extent possible.
- 5-11. Patricia Graham, Wilshire Drive, stated that Mayor Wilson's statement that the current COAH plan cannot be amended until there is substantive certification was incorrect. The third round rules are posted on the COAH website, and it clearly states that the plan can be amended.
- 5-12. Mayor Wilson commented that she wanted to clear up the point she made about amending the plan, she wanted it clarified that it was on the urgent advice of staff and professionals that Montgomery not amend its COAH plan.
- 5-13. Tom Wilson, Belle Mead, stated he did not hear anything about the preservation of Skillman Village as a desirable goal. He recommended that the Township not walk away from what the County has to offer.
- 5-14. Glenn Udell, Viburnum Drive, spoke about the options regarding the COAH plan and the possible COAH units at Skillman Village.
- 5-15. Committeewoman Birge explained the financial aspects of COAH units at Skillman Village and the selling of Skillman Village to the County.
- 5-16. Frank Drift, Sunset Road, spoke about the planning and history of Skillman Village. He stated that when the original negotiations were happening for the Township to buy that site from the State, there was no thought that there would be COAH housing there.
6. **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 #09-10-313 - REFUND OVERPAID 2009 TAXES**

BE IT RESOLVED That refunds be given to the following for the overpayment of 2009 taxes:

<u>Block</u>	<u>Lot</u>	<u>Name</u>	<u>Amount</u>	<u>Year</u>
17001	6.15	Shadrach, Richard	\$3,762.70	2009
23001	8.10	Nations Title Agency, Inc. (NLS)	\$1,459.23	2009

B. **RESOLUTION #09-10-314 - REFUND OVERPAID 2009 SEWER TAX**

BE IT RESOLVED That a credit in the amount of \$165.12 be given to James X. Paterno, 25 Tarrytown Terrace, Belle Mead, NJ 08502 for the overpayment of his 2009 sewer tax. The credit will be reflected on Mr. Paterno's 2010 sewer bill.

C. **RESOLUTION #09-10-315 - ACCEPTING DONATION FROM THE MONTGOMERY FRIENDS OF OPEN SPACE**

BE IT RESOLVED That the Montgomery Township Committee hereby accepts a donation from the Montgomery Friends of Open Space in the amount of \$316.89 (check #455) for repairs made to the Cherry Hill Road parking lot (Block 33001 Lot 13.02).

D. **RESOLUTION #09-10-316 - ACCEPTING DONATION FROM KENT REALTY AND MANAGEMENT (Princeton North)**

BE IT RESOLVED That the Montgomery Township Committee hereby accepts a donation of five (5) heavy duty stone garbage cans from Kent Realty and Management (Princeton North) for the Public Works Department.

E. **RESOLUTION #09-10-317 - ROAD CLOSINGS FOR "FALL FESTIVAL PARADE" - Skillman Road from Fairview Road to County Route 601**

BE IT RESOLVED By the Montgomery Township Committee that Skillman Road from County Route 601 to Fairview Road be closed to vehicular traffic on Saturday, October 24, 2009 beginning at 8:45 a.m. for the purposes of a parade for "Fall Festival".

F. **RESOLUTION #09-10-318 - AUTHORIZING AMENDMENT TO SEWER AGREEMENT - East Country Development Associates Corp. - Westwinds Subdivision Sewer Improvements**

BE IT RESOLVED That the Township Committee approves an amendment to the sewer agreement with East Country Development Associates Corp. pertaining to the Westwinds subdivision lift station, force main and other public sewer improvements and authorizes the Mayor and Clerk to execute the same.

(CONSENT AGENDA Cont.)

G. **RESOLUTION #09-10-319 - AUTHORIZING SOLICITATION OF BIDS - Pike Brook Wastewater Treatment Plant Upgrade and Expansion**

WHEREAS, The Township of Montgomery seeks construction services for the Pike Brook Wastewater Treatment Plant Upgrade and Expansion; and

WHEREAS, The Township seeks to solicit bids from qualified contractors for this purpose in the manner set forth by the Local Public Contracts Law.

NOW, THEREFORE, BE IT RESOLVED By the Township Committee of the Township of Montgomery that the Township Purchasing Agent, in coordination with the Township Administrator and Township Clerk, is hereby authorized and directed to draft the necessary specifications and contract documents and advertise for the construction of the Pike Brook Wastewater Treatment Plant Upgrade and Expansion.

H. **RESOLUTION #09-10-320 - AWARD OF BID - Tiger's Tale Loop Road Sewer Line**

WHEREAS, The following bids were received and were publicly opened on October 2, 2009:

<u>BIDDER</u>	<u>AMOUNT</u>
CRJ Contracting Corp.	\$189,879.04
Jogi Construction, Inc.	\$113,261.76
Montana Construction	\$222,445.00
Monmouth Excavators, Inc.	\$114,029.00
John Garcia Construction	\$104,436.80
Topline Construction Corp.	\$133,926.00
D & D Utility Contractors, Inc.	\$ 98,666.00
Star Contracting, Inc.	\$ 80,779.00*
Waters & Bugbee, Inc.	\$140,426.00

WHEREAS, It is the recommendation of the Purchasing Agent that Star Contracting, Inc. be awarded the bid; it being the lowest responsible bidder; and

WHEREAS, There exists an account 04-216-55-901-1184F which will fund this contract; and

WHEREAS, A certificate as to the availability of funds has been signed by the Chief Financial Officer and is on file in the office of the Township Clerk.

NOW, THEREFORE, BE IT RESOLVED By the Montgomery Township Committee that the contract for the Sanitary Sewer Extension is hereby awarded to Star Contracting, Inc., 195 Route 206S, Hillsborough, NJ 08844 in the amount of \$80,779.00.

BE IT FURTHER RESOLVED That the Mayor and Clerk are hereby authorized to sign said contracts.

I. **TOWNSHIP COMMITTEE APPOINTMENT - Sustainable Montgomery**

BE IT RESOLVED That Irene Stein be hereby appointed Sustainable Montgomery Regular Member, Shade Tree Committee, 1 year term expiring December 31, 2009.

BE IT FURTHER RESOLVED That Debbie Gartenberg be hereby appointed Sustainable Montgomery Alternate, Environmental Commission, 1 year term expiring December 31, 2009.

6-1. Committeeman Caliguire moved the adoption of the **CONSENT AGENDA** . The motion was seconded by Committeeman Fay and carried on the following:

**ROLL CALL:** Ayes - Birge, Caliguire, Fay, Dyer, Wilson  
Nays - None

7. **MAYORAL APPOINTMENTS - Environmental Commission**

BE IT RESOLVED that Mary Reece be hereby appointed Environmental Commission Regular Member, replacing Kim Giles, 3 year term expiring December 31, 2010.

BE IT FURTHER RESOLVED That Debbie Gartenberg be hereby appointed Environmental Commission Alternate I, replacing Mary Reece, 2 year term expiring December 31, 2009.

BE IT FURTHER RESOLVED That Fred Mechini be hereby appointed Environmental Commission Alternate II, replacing Debbie Gartenberg, 2 year term expiring December 31, 2010.

8. ORDINANCE #09-1336 - Flood Certificate Fees - Public Hearing

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

AN ORDINANCE AMENDING SUBSECTION 16-6.4d.14(c) TO  
INCREASE THE FEES FOR FLOOD HAZARD CERTIFICATES

B. Mayor Wilson opened the hearing to the public. There being no comment, Deputy Mayor Birge moved that the public hearing be closed. The motion was seconded by Committeeman Caliguire and carried unanimously.

C. BE IT RESOLVED By the Township Committee that the foregoing ordinance be hereby adopted this 15<sup>th</sup> day of October, 2009 and that notice thereof be published in an official newspaper as required by law.

8-1. Committeeman Fay moved the adoption of the foregoing resolution. The motion was seconded by Deputy Mayor Birge and carried on the following:

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

9. ORDINANCE #09-1337 - Nicolaysen Tree Planting - Public Hearing

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

AN ORDINANCE AUTHORIZING AS A GENERAL IMPROVEMENT THE  
ACQUISITION AND PLANTING OF TREES ON BLOCK 34001,  
LOT 37.02 (NICOLAYSEN OPEN SPACE) BY THE TOWNSHIP OF  
MONTGOMERY AND APPROPRIATING \$14,770.62 THEREFOR FROM THE  
"CONTRIBUTIONS IN AID OF CONSTRUCTION FUND" OF SAID  
TOWNSHIP.

B. Mayor Wilson opened the hearing to the public. There being no comment, Committeeman Fay moved that the public hearing be closed. The motion was seconded by Committeeman Caliguire and carried unanimously.

C. BE IT RESOLVED By the Township Committee that the foregoing ordinance be hereby adopted this 15<sup>th</sup> day of October, 2009 and that notice thereof be published in an official newspaper as required by law.

9-1. Deputy Mayor Birge moved the adoption of the foregoing resolution. The motion was seconded by Committeeman Fay and carried on the following:

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

10. ORDINANCE #09-1338 - BOND - Reappropriation of Funds From Other Capital Projects for the Reconstruction of Spring Hill Road - Public Hearing

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

ORDINANCE REAPPROPRIATING \$63,000 NOT NEEDED FOR THE  
ORIGINAL PURPOSE IN ORDER TO PROVIDE FOR THE  
RECONSTRUCTION OF SPRINGHILL ROAD IN AND BY THE TOWNSHIP  
OF MONTGOMERY, IN THE COUNTY OF SOMERSET, NEW JERSEY.

B. Mayor Wilson opened the hearing to the public. There being no comment, Committeeman Fay moved that the public hearing be closed. The motion was seconded by Deputy Mayor Birge and carried unanimously.

C. BE IT RESOLVED By the Township Committee that the foregoing ordinance be hereby adopted this 15<sup>th</sup> day of October, 2009 and that notice thereof be published in an official newspaper as required by law.

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

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

11. ORDINANCE #09-1339 - Amending 2009 Salary and Wage Plan (To Reduce Township Committee Salaries) To be continued as amended

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

AN ORDINANCE ESTABLISHING A COMPREHENSIVE SALARY  
AND WAGE PLAN FOR THE TOWNSHIP OF MONTGOMERY,  
SOMERSET COUNTY, AND TO PROVIDE FOR ITS  
ADMINISTRATION IN 2009.  
TOWNSHIP.

B. BE IT RESOLVED By the Township Committee that the foregoing ordinance be hereby continued, as amended, to be continued to November 5, 2009.

11-1. Deputy Mayor Birge moved the adoption of the foregoing resolution. The motion was seconded by Committeeman Fay and carried on the following:

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

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 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.

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

**ROLL CALL:** Ayes - Birge, Caliguire, Fay, Dyer, Wilson  
Nays - None

13. **MONTGOMERY NIGHT OFF**

Committeeman Fay spoke about the Montgomery Night Off, which will be March 4, 2010. He asked that the Township Committee meeting for that night be cancelled. The Committee agreed to move the March 4, 2010 meeting to March 3, 2010.

14. **SHARED SERVICES OPPORTUNITIES**

Administrator Nieman reported that the Township was approached by the Borough of Hopewell to discuss the possibility of sharing some services, which included Animal Control, Health and Police. We shared with the Borough our concerns about the Police aspect of it and the inter-County operability aspect.

15. **SEWER CAPACITY AGREEMENT - Elks**

Attorney Hadinger stated that the septic system at the Elks Lodge on Route 518 was in the process of failing. She recommended that the Elks execute an agreement with the Township to connect to the Sanitary Sewer system.

16. **RESOLUTION TO CLOSE MEETING TO THE PUBLIC**

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

1. The Township Committee will now convene in a closed session that will be limited only to consideration of items with respect to which the public may be excluded pursuant to Section 7B of the Open Public Meetings Act.
2. The general nature of the subjects to be discussed in this session is as follows:
  - Negotiation of terms and conditions of Somerset County discussions regarding Skillman Village.
3. It is unknown precisely when the matters discussed in this session will be disclosed to the public. Approval of agreements shall only be authorized by the Township Committee in a public session.

17. Committeeman Fay moved the adoption of the foregoing resolution. The motion was seconded by Committeewoman Dyer and carried unanimously.

18. Meeting reconvened in Open Session and Adjournment was at 10:05 p.m. on a motion by Committeeman Fay, seconded by Committeewoman Dyer and carried unanimously.

Date of Approval:

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Donna Kukla, Township Clerk