

ANDOVER TOWNSHIP COMMITTEE MEETING MINUTES

**BOB SMITH, MAYOR
GAIL PHOEBUS, DEPUTY MAYOR
PHIL BOYCE
MICHAEL LENSAK
THOMAS WALSH**

SEPTEMBER 28, 2009

EXECUTIVE SESSION - 6:00 P.M.

REGULAR MEETING - 7:30 P.M.

The regular meeting of the Andover Township Committee was called to order at 6:06 P.M. by Mayor Smith, followed by a salute to the flag.

ROLL CALL: Present: Mr. Boyce, Mr. Lensak, Mr. Walsh,
Mayor Smith
Also present: Administrator Alfano, Attorney Semrau
Those absent: Ms. Phoebus (excused)

OPEN PUBLIC MEETING STATEMENT Statement of compliance with Chapter 231, P. L. 1975 was made by Mayor Smith.

EXECUTIVE SESSION: On a motion by Mr. Walsh, seconded by Mr. Boyce, the resolution to go into executive session to discuss

Personnel Matters:

1. ***Philip Coleman, Chief of Police***
2. ***Karen Reed, Senior Clerk-Typist-Construction/Tax***
3. ***Vita Thompson, Municipal Clerk***
4. ***Tim Day, Chief Financial Officer***

Contract Negotiations:

1. ***Byram Township - Forest Lakes Section***

There will be discussion regarding the plowing and sanding of roads in this portion of Andover Township by the Byram Township Department of Public Works.

2. ***Open Space Acquisition***

There will be discussion regarding the status of the proposed application before the County. Sandy Urgo from the New Jersey Land Conservancy will be present during this discussion.

3. ***Jayme Alfano, Township Administrator***

There will be discussion regarding the transition period with this position.

4. ***Special Counsel William Friedman - Riverbank Project***

There will be discussion held regarding outstanding bills for this service.

Attorney-Client Privilege:

1. ***Ray's Inn Liquor License Renewal***

Potential Litigation

Pending Litigation

1. ***Roberts vs. Andover Township***

was carried unanimously.

There is a pending lawsuit with issues regarding the former wall on Ballantine Road. There will be discussion concerning recent correspondence received from the Plaintiffs' attorney.
(See Insert Attached to These Minutes)

The Committee went into executive session at 6:06 P.M. Mr. Walsh moved to adjourn executive session at 7:35 P.M., seconded by Mr. Boyce and carried unanimously.

REGULAR MEETING

APPROVAL OF AGENDA Mayor Smith remarked on the issues discussed during the Executive Session. He added that because not all items were addressed there will be a second closed session this evening.

Mr. Walsh asked the agenda be amended to include item #4 under New Business: Renaming of Streets for Discussion. Mr. Walsh moved to approve the Regular Agenda as amended, seconded by Mr. Boyce and carried unanimously.

APPROVAL OF CONSENT AGENDA ITEMS Mr. Walsh asked that Resolution #R2009-159 be pulled from the Consent Agenda for further discussion. Mr. Lensak asked Resolution #R2009-156 be removed for further discussion. Mr. Walsh moved the following consent items be approved, seconded by Mr. Boyce and carried unanimously.

CONSENT AGENDA:**OTHER BUSINESS:****APPROVAL OF VOUCHERS FOR PAYMENT**

(See Inserts Attached to These Minutes)

**APPROVAL OF RAFFLE LICENSES - INTERFAITH HOSPITALITY NETWORK
OF SUSSEX COUNTY - TO BE HELD ON NOVEMBER 15, 2009 FROM
10:00 A.M. TO 4:00 P.M. - AT THE HILLSIDE PARK HALL**

- A. R.L. #887- ON PREMISE 50/50
- B. R.L. #888 - ON PREMISE MERCHANDISE

***RESOLUTIONS:**

**#R2009-155 RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP
OF ANDOVER, COUNTY OF SUSSEX AND STATE OF NEW JERSEY
TO AUTHORIZE THE TAX COLLECTOR TO ISSUE A REFUND TO
WELLS FARGO REAL ESTATE TAX SERVICES LLC IN THE AMOUNT
OF \$1,223.91 FOR PAYMENT OF TAXES FOR PROPERTY NOT
LOCATED IN ANDOVER TOWNSHIP**

**#R2009-157 RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP
OF ANDOVER, COUNTY OF SUSSEX AND STATE OF NEW JERSEY
TO AUTHORIZE THE TAX COLLECTOR TO ISSUE A REFUND TO
JANICE T. FRANCISCO IN THE AMOUNT OF \$1,187.46 FOR AN
OVERPAYMENT IN THE THIRD QUARTER 2009 TAXES FOR
BLOCK 21/LOT 5**

**#R2009-158 RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX, STATE
OF NEW JERSEY ISSUE A TAX REFUND TO PARK FINANCE,
LLC IN REGARDS TO THE REDEMPTION OF TAX SALE
CERTIFICATE #07-0001 SOLD FOR DELINQUENT TAXES FOR
BLOCK 38/LOT 16 IN THE AMOUNT OF \$37,925.83**

***CONSENT AGENDA: (CONTINUED)**

***RESOLUTIONS: (CONTINUED)**

#R2009-160 RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX, STATE OF NEW JERSEY TO AUTHORIZE THE TAX COLLECTOR TO ISSUE A REFUND TO FIRST AMERICAN REAL ESTATE TAX SERVICE IN THE AMOUNT OF \$817.29 FOR AN OVERPAYMENT IN THE THIRD QUARTER 2009 TAXES FOR BLOCK 109/LOT 4.01 - C0114

#R2009-161 RESOLUTION OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX AND STATE OF NEW JERSEY TO AMEND RESOLUTION #R2009-144 TO INCLUDE ADDITIONAL SURPLUS MUNICIPAL EQUIPMENT THAT IS CONSIDERED UNREASONABLY EXPENSIVE TO REPAIR FOR SALE AT THE SUSSEX COUNTY COOPERATIVE SURPLUS AUCTION 2009

#R2009-162 RESOLUTION OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX AND STATE OF NEW JERSEY AUTHORIZING AN AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT WITH MATTHEW J. MULHALL, P.G. OF M2 ASSOCIATES, INC. FOR HYDROGEOLOGY SERVICES ASSOCIATES WITH THE SPARTA PUMP STORAGE PROJECT

#R2009-163 RESOLUTION OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX AND STATE OF NEW JERSEY AWARDDING THE BID FOR THE PERONA ROAD RECONSTRUCTION PROJECT - PHASE I TO SALMON BROS., INC. IN THE AMOUNT OF \$63,030.00

#R2009-164 RESOLUTION OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX AND STATE OF NEW JERSEY TO AUTHORIZE THE SUBMISSION OF AN APPLICATION FOR THE ACTION ALLIANCE GRANT FOR CALENDAR YEAR 2010 IN THE AMOUNT OF \$18,772.00

#R2009-165 RESOLUTION OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX AND STATE OF NEW JERSEY TO AUTHORIZE THE PURCHASE OF ICE CONTROL MATERIALS (SALT AND GRITS) FOR THE DEPARTMENT OF PUBLIC WORKS

(See Inserts Attached to These Minutes)

***APPROVAL OF MINUTES**

**AUGUST 10, 2009 REGULAR MEETING
SEPTEMBER 14, 2009 REGULAR MEETING**

RESOLUTIONS**#R2009-156 RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX AND STATE OF NEW JERSEY AUTHORIZING THE AWARD OF A PROFESSIONAL SERVICES CONTRACT WITHOUT COMPETITIVE BIDDING TO CLOUGH HARBOUR & ASSOCIATES, LLP FOR ENERGY ENGINEERING SERVICES ASSOCIATED WITH THE LOCAL GOVERNMENT ENERGY AUDIT PROGRAM**

Mr. Lensak questioned if this resolution will cost the municipality anything. CFO Day was present and he explained the initial wording is at 75% of the proposal. The additional 25% will be awarded once the audit is complete and the town institutes the recommendations from the audit. Mr. Lensak asked what percentage of the recommendations has to be instituted in order to receive the 25%. CFO Day said it was not said what recommendations must be complied with, stating it would be a case by case basis. Mr. Lensak stated that he understands these audit reports can vary in depth down to replacing windows, doors and this activity is not in our budget to do so. If we don't do this, would we be precluded from receiving the other 25% because we did not do what the energy audit recommended we do. CFO Day stated it was not mentioned what quantity of the recommendations had to be done.

Mr. Lensak moved to adopt the foregoing resolution as presented, seconded by Mr. Walsh and carried unanimously.

(See Insert Attached to These Minutes)

#R2009-159 RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX, STATE OF NEW JERSEY TO APPOINT SHAUNA L. TILLOTSON TO THE POSITION OF DEPUTY COURT ADMINISTRATOR IN A PROVISIONAL STATUS EFFECTIVE IMMEDIATELY

Mr. Walsh asked that this Resolution be adopted subject to satisfaction of the scheduling of this office. Attorney Semrau explained that this request would be under the purview of the Court as well. Ultimately we would have to receive the approval from the Judge. Mr. Boyce stated he spoke with the Court Administrator who made a recommendation as to how the scheduling could be handled. He stated what we are trying to do is having the Court Office open consistent with the Municipal Building. They asked if they could be open from 9 to 4 because no one shows before 9:00 am. They then asked because Ms. Tillotson doesn't work on Wednesday, in order to comply with being open all day, the Court Administrator has to be present additional hours on Wednesday. He recommended the office be open from 9 to 4 and on Wednesday, the Court Administrator would work all day, and the two additional hours be compensated in time two hours any other day of the week.

The Township Committee agreed the Resolution should be amended to include the office hours of 9 to 4 daily each week. Mayor Smith stated the other details should be worked out amongst the Personnel. The consensus was that the Committee would not be giving additional hours to the Court staff. The amendment was made to the resolution as discussed.

Mr. Walsh moved to adopt this Resolution as amended, seconded by Mr. Boyce and carried unanimously.

(See Insert Attached to These Minutes)

OPEN TO THE PUBLIC Diane Gillespie, Andover-Mohawk Road distributed copies of an Ordinance regarding Brush, Grass and Weeds. She stated in speaking with the Zoning Officer there are differences of opinion on what this ordinance actually means. She explained her interpretation of the ordinance is that there should be no planting within 10 feet of the roadway or 25 feet of the intersection of two roadways, cut to a height of not more than three feet. Following a short discussion it was decided that this Ordinance be forwarded to the Land Use Board for them to provide clarification of this Ordinance. It was also stated that the Zoning Officer should be contacted to review this issue further with the Road Supervisor in order to establish if there is a possibility of equipment damage when plowing the roadways due to the placement of a large boulder. Attorney Semrau stated in showing this Ordinance to the Planners they will review this concept and word this in a more concise and clearer manner.

She then remarked on the issue surrounding the release of the Township Administrator and from what has been said other positions will also be reviewed regarding staff reduction. She stated that she hopes before anything is done there is a plan in place. Ms. Gillespie added that in speaking to residents they are all very happy with the level of service they receive from the employees in the municipal building. As taxpayers they are the ones paying these salaries and she doesn't understand where this is going and why. Mayor Smith stated conversation regarding this matter will be held in the Executive Session later this evening.

Mr. Boyce responded to the issue of the budget crisis looming in 2010 and the Township Committee will have a difficult time managing the budget next year. The State has reduced hundreds of thousands of dollars from the municipal compensation. He stated the ratables are not increasing and businesses are leaving faster than they are being replaced. This year when the budget was adopted, many things were discussed such as turning off street lights, closing the municipal building on Fridays and because of not being able to identify what the savings might be, that thought was dismissed. Mr. Boyce stated that following a close review, a savings was realized. He stated now they need to look at positions. He stated he hates to have to look in this direction because it will cause a problem with the level of service being maintained. He added that these decisions are not made lightly because we are also dealing with peoples' lives and families. If the decisions are not made now, the Township will be in a very difficult position next year.

Mr. Boyce stated that the Finance Committee was criticized this year for passing a tax increase, though it was modest. Comments were made such as they could not believe this Committee didn't find more budget cuts. These comments can not be made and then criticized again once cuts are found. Ms. Gillespie stated as residents they have a right to know the reason behind that decision and why the new proposal is going to be better or will solve the problem.

Lois de Vries, Environmental Commission spoke about the Limestone Valley first providing a short history that in 2004 the Commission requested a Carbonate Rock Ordinance, and again in early 2005. She stated in October of that year the Commission hosted geologists to discuss carbonate rock issues in the Township, sinkholes and other facets of topography. A model ordinance was presented at that time. Late 2005 and by early 2006, the Limestone Valley flooded and the Nursing home sewerage treatment plant failed and was out of compliance for months. The potential new plant cannot safely site a disposal field. In early 2006 Laura Nicholson did a presentation before the Land Use Board to explain conditions in the Valley. In the spring of 2007 the NRI called for protective measures through the Valley based on science and history. In fall 2007, early 2008 and January 2009 the Commission asked again for this Ordinance. She then referenced the proposed Riverbank project which was then abandoned in July 2009 due to the complex nature of the limestone structures.

She stated she prepared a packet for Attorney Semrau and Mayor Smith. She stated she collected all the information that the Environmental Commission assembled through the years and she asked again for the Township Committee to pass this Ordinance.

OPEN TO THE PUBLIC (CONTINUED) Ms. de Vries then commented on the issue of the PO/R Zone under Other Business. She stated that the reason for the rezoning of this area by the Economic Development Advisory Committee was unclear to her except for the fact that one individual wanted to have a retail business. Mr. Walsh explained there may have been a misunderstanding, it was the northern side of Newton-Sparta Road they were requesting be amended, not the south side. Mr. Melfi agreed.

Attorney Semrau asked Ms. de Vries about the carbonate rock ordinance. With history aside because the NRI was suggested in 2007 that was going to be helpful to guide same as the work done through a grant with Matt Mulhall, he stated that it is not just a five year calling, there are reports that we are looking for. He asked Ms. de Vries to explain briefly how she would perceive that ordinance would protect the municipality. She stated the model ordinance functions is that carbonate rock district is outlined on a map done for the NRI in 2007. The mapping is in place outlining the area through the survey. The model ordinance uses this map to define the carbonate rock district, and in addition we have to define the recharge area. If this area is destroyed or changed the flow of the water, then the water going down into the aquifer will go into a different watershed and the recharge will be less. Depending on the type of rock there is, you would want to be able to approximate problem areas are. She spoke about sinkholes and shale areas as reasons for such an ordinance.

Attorney Semrau stated the last time this issue was discussed it was at the time the grant application was before the Township Committee and they approved the filing of that application. Once Mr. Mulhall was to complete his report, that was when the Committee was to take another look at this Ordinance and his report is not done as yet. She stated that the report will provide more detailed data about water availability which is not the same thing. It will encompass the Limestone Valley, but the hydrogeologist's report is for the whole town. She added the report is not necessarily needed to move forward.

Attorney Semrau stated that first we need to see where we left off with the report because it may be helpful. He added that Mr. Mulhall may be able to tell us why we should or shouldn't proceed with such an Ordinance by providing an overview and experiences he has had. The Township Committee agreed.

Mayor Smith suggested that this issue be continued with input from the public when we reach the topic on the agenda.

Betty Donnelly, 22 Longview Road stated as a 37 year resident and first came to a Township Committee meeting four years ago. She stated in those years, Ms. Alfano has been the person with the most intelligence and has gotten most things done in all the administrators she has seen. She then spoke about health benefits and asked if in an attempt to keep costs down are any Committee members who are receiving benefits and salary thinking about giving up their insurance.

Stan Christodlous, 6 Wisteria Road in response to a comment by Mr. Lensak, he stated that this Committee should not be concerned if there is possible litigation when deciding to enact an Ordinance. He stated they should be concerned if there is successful litigation because there will always be litigation. Mr. Lensak stated that is what he said, he asked if an ordinance has withstood a legal challenge.

In reviewing the Executive Session items, Mr. Christodlous referenced discussion regarding the transition period of the administrator's position. He asked why the public is not allowed to hear what the plans are. Attorney Semrau stated this item is under Contract Negotiations explaining there is an agreement with the Administrator and the Committee wanted to have a discussion about the transition and terms of the Administrator's contract. He stated anything going forward from this discussion would ultimately be a public decision. The terms of the contract and any possible questions, they can be answered in Executive Session. He added if anyone has a question regarding a legal interpretation of the agreement, it must be answered in closed session. There was continued discussion about Executive Session process explanation by the Township Committee and Attorney Semrau.

OPEN TO THE PUBLIC (CONTINUED) Mr. Christodlous then stated if the Township wants to reduce costs, not accepting health benefits would not hurt the Township at all. He added that releasing a Township Administrator does.

Ben Bensley from Mountainside Drive asked who would do the duties of the office of administrator when she leaves December 1st. He asked if monies would be lost if she isn't here to handle the grant applications. He stated this is a full time position. Attorney Semrau stated the Township Committee has to make a decision as to what will happen going forward. There hasn't been discussion or action at a public meeting regarding what will happen. He added that it is safe to say this has just reached the discussion stage at to where it goes from here. He asked if there is personnel here that can handle another person's job. Mr. Walsh replied possibility. Mr. Bensley remarked about an article in the NJ Herald about a settlement and he stated in his opinion that settlement was a result of her responsibilities. Mr. Boyce replied there is no connection there.

Mr. Bensley then commented about discussion held during the budget hearings where Mr. Boyce said we can't let anyone go because it is what Andover Township residents come to expect. Mr. Boyce stated whatever reference he made was to the budget that they were able to do without cutting any positions. Whatever savings that may occur, if there is one is for the budget year 2010. Mr. Boyce added next year will be a tough budget year and we have to start looking now to address issues. It is a difficult process and something the Committee does not enjoy.

Mr. Bensley stated we have had an administrator for years who is in charge over everyone and he asked again who will be in charge. Mr. Boyce stated every department has a department head and anyone will be able to go to them for the assistance they need. Mr. Bensley then asked if that is the case why have we always had an administrator. Mr. Walsh stated he has been against having this position for the last five years.

Mr. Bensley asked if we could lose any other position. Mr. Boyce replied he did not know but felt it smart to look at every position. Mr. Bensley asked about the union contract negotiations questioning if these contracts are negotiated properly so we can save everywhere we can.

Seeing no other hands, Mayor Smith closed the public portion.

ORDINANCES: PUBLIC HEARING

NO. 2009-32 TO REPEAL CHAPTER 86 "LOITERING"

"AN ORDINANCE OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX AND STATE OF NEW JERSEY REPEALING CHAPTER 86 "LOITERING" OF THE REVISED GENERAL ORDINANCES"

Mayor Smith opened the public hearing and seeing no hands he closed the hearing.

An ordinance of which the foregoing is the title was introduced and passed on first reading at the regular meeting of the Andover Township Committee on September 14, 2009, was advertised according to the law and was brought before the public for final consideration. There being no objections, Mr. Walsh moved the adoption of the above entitled ordinance, seconded by Mr. Boyce. Roll call vote:

Mr. Boyce - yes	Mr. Lensak - yes
Ms. Phoebus - absent	Mr. Walsh - yes
Mayor Smith - yes	

ORDINANCES: PUBLIC HEARING (CONTINUED)**NO. 2009-33 TO AMEND CHAPTER 107 "PEACE AND GOOD ORDER"**

"AN ORDINANCE OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX, AND STATE OF NEW JERSEY REPEALING CHAPTER 107, "PEACE AND GOOD ORDER", SECTION 107-10, "INDECENT BEHAVIOR", SUBSECTION (B), "INDECENT LANGUAGE" OF THE REVISED GENERAL ORDINANCES"

Mayor Smith opened the public hearing. Ms. Gillespie asked what this ordinance actually means. Attorney Semrau explained this action is with respect to the definition which is overbroad. This was pointed out to the Township that this particular Ordinance has been long since declared invalid. He then spoke about the public intoxication ordinance which is now a class action suit which was determined to be an illegal and unconstitutional type of Ordinance. Seeing no other hands, Mayor Smith closed the public hearing.

An ordinance of which the foregoing is the title was introduced and passed on first reading at the regular meeting of the Andover Township Committee on September 14, 2009, was advertised according to the law and was brought before the public for final consideration. There being no objections, Mr. Walsh moved the adoption of the above entitled ordinance, seconded by Mr. Boyce. Roll call vote:

Mr. Boyce - yes	Mr. Lensak - yes
Ms. Phoebus - absent	Mr. Walsh - yes
Mayor Smith - yes	

ORDINANCES: INTRODUCTION**NO. 2009-34 TO AMEND CHAPTER 136 "SOIL EROSION"**

"AN ORDINANCE AMENDING CHAPTER 136 "SOIL EROSION" SECTIONS 136-4, "PERMIT REQUIRED", 136-7(D) "ISSUANCE OF PERMIT", 136-10 "EXEMPTIONS", 136-11 "FEES" & 136-17 "JURISDICTION" OF THE REVISED ORDINANCES OF THE TOWNSHIP OF ANDOVER"

BE IT RESOLVED by the Mayor and Committee of the Township of Andover, that Ordinance #2009-34, entitled as above, be passed on first reading, to be published in the New Jersey Herald and the public hearing to be held on October 26, 2009 at 7:30 P.M. local prevailing time, or as soon thereafter as the matter can be reached in the Municipal Building, 134 Newton-Sparta Road, Roll call vote:

Mr. Boyce - yes	Mr. Lensak - yes
Ms. Phoebus - absent	Mr. Walsh - yes
Mayor Smith - yes	

Attorney Semrau explained that on file is a letter from the Department of Agriculture who reviewed the consistency of the Ordinance requiring this amendment.

RESOLUTIONS

#R2009-166 RESOLUTION OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX AND STATE OF NEW JERSEY AUTHORIZING THE RENEWAL OF PLENARY RETAIL CONSUMPTION LICENSE #1902-33-012-007 FOR RAY C. INC. T/A RAY'S INN FOR THE TERM SEPTEMBER 29, 2009 THROUGH JUNE 30, 2010 WITH CERTAIN CONDITIONS

Attorney Semrau informed the public that this resolution is available to the public. Mr. Walsh moved to adopt this resolution as presented, seconded by Mr. Boyce.

Attorney Semrau explained this resolution is for the renewal of the liquor license. On September 14th there was a discussion before the Township Committee. Chief Coleman provided information and documentation. The licenseholder was also present with his legal representation. He also spoke about his liquor license renewal. Attorney Semrau explained that from an administrative standpoint the license is in order. After further discussion this evening in Executive Session there was an outline for the Committee of some of the legal options relevant to this license.

Attorney Semrau stated that it is his recommendation under the circumstances that it would not be necessarily appropriate at this time, based on the legal standards set forth by the ABC to revoke this license. However, he stated based on the recommendations of the Chief of Police he set forth various conditions in the Resolution for the Township Committee to consider for approval. Many of the conditions are what have previously been set forth for this license. It also adds the condition that the holder has continue to maintain cameras and video by the door and the outside exterior parking area and that videotape shall be maintained for a period of 30 days in the event the police request that information. Also based on the discussion and information provided by the Chief of Police, restriction number seven provides that the licenseholder shall not conduct any type of live adult entertainment on the licensed premises. The third new condition is that the Committee shall continue to monitor this license and the licenseholder shall immediately apprise the Township of any disposition of the charges asserted against the licenseholder that are presently pending with the State of New Jersey.

Mayor Smith asked for a Roll call vote:

- | | |
|----------------------|------------------|
| Mr. Boyce - yes | Mr. Lensak - yes |
| Ms. Phoebus - absent | Mr. Walsh - yes |
| Mayor Smith - no | |

#R2009-167 RESOLUTION OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX AND STATE OF NEW JERSEY AWARDDING THE CONTRACT FOR DETENTION BASIN MAINTENANCE TO APS FOREST SOLUTIONS, LLC.

Mayor Smith explained that the confusion regarding this scope of work has been resolved. There are two separate functions with detention basins. The other is for basin beautification and this contract is for the actual maintenance. Mr. Walsh moved to adopt this Resolution as presented, seconded by Mr. Boyce and carried unanimously.

RESOLUTIONS (CONTINUED)

#R2009-168 RESOLUTION OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX AND STATE OF NEW JERSEY TO AUTHORIZE CHANGE ORDER NO. 1 TO THE EXISTING CONTRACT BETWEEN THE TOWNSHIP OF ANDOVER AND MITSCHELE EXCAVATING FOR THE MUNICIPAL BUILDING UPPER PARKING LOT RETAINING WALL IMPROVEMENTS PROJECT FOR AN INCREASE IN THE CONTRACT AMOUNT OF \$1,326.00 FOR A TOTAL OF \$10,186.00

Mr. Walsh moved to adopt the foregoing Resolution as presented, seconded by Mr. Boyce. Roll call vote:

- | | |
|-----------------------|------------------|
| Mr. Boyce - yes | Mr. Lensak - yes |
| Ms. Phoebus - absent | Mr. Walsh - yes |
| Mayor Smith - abstain | |

(See Inserts Attached to These Minutes)

OLD BUSINESS

CONTINUED DISCUSSION REGARDING PROPOSED AMENDMENTS TO CHAPTER 190 ZONING "PRINCIPAL PERMITTED USES" TO INCLUDE "RETAIL SALES" IN THE PO/R ZONE

Township Planner Chuck McGroarty was present for this discussion. He provided a brief history on this Ordinance up to its adoption in 2008 based on a recommendation to rezone a section along Newton-Sparta Road from residential zoning to something that would be more flexible. His understanding was that the residents in that area were in favor of such a change. The north had been in the Community/Business Zone and the south was Residential Zone and the consensus was to create one new comprehensive zone to create a commercial node at that end of the municipality. The end result was the adoption of Ordinance #2008-08.

Planner McGroarty stated the consensus was that retail use on the south side was not a good fit due to the location of the homes. This new zone district encompasses both the north and south sides of Newton-Sparta Road and it does not permit retail sales.

Mr. Boyce stated he understood why retail sales were eliminated from the south side but he asked why this was extended to the north side. He replied his understanding was to impose a new type of zone district in this area and it was discussed at the Land Use Board level. This was seen as a way of encompassing what is out on the north side today and on the south side so that few if any existing properties would be rendered non-forming. He did not know why but the result was instead of trying to create the seed community business on the south side, let's put a whole new zone on both sides.

Mr. Boyce asked how difficult would it be to change it so that on the north side of the road retail could be allowed. Planner McGroarty stated it could be done and he didn't feel it would be difficult. Some of the questions would be what sort of retail, how extensive it would be to modify the north side to call it perhaps the PO/R-1 Zone instead of creating a new zone. Doing this may preclude the need to get another Master Plan amendment.

Attorney Semrau asked if limited retail would be along the lines of consistency with the PO/R Zone. He replied that it would not be at odds with the concept of a new zone to create a combination of possibilities between professional offices and conversion of single family dwellings into offices. He said the north side is different in character and makes sense to allow to a certain extent retail use.

OLD BUSINESS (CONTINUED)**CONTINUED DISCUSSION REGARDING PROPOSED AMENDMENTS TO
CHAPTER 190 ZONING "PRINCIPAL PERMITTED USES" TO INCLUDE
"RETAIL SALES" IN THE PO/R ZONE**

He once again stated he sees no difficulty with that except for working out the details. He added it would be a better fit on the north side than on the south side. Mr. Boyce asked about a restaurant and Planner McGroarty stated restaurants were permitted and he sees that to be positive.

Mayor Smith stated that one of the reasons for this as he recalls was simply consistency. He stated we were trying to take some zones and make some kind of sense and if it is good on one side it should be consistent on the other. Mayor Smith asked if we really believe that this is incorrect and needs to be fixed. Mr. Boyce stated some are concerned about every empty storefront in Andover Township which represents a ratable that goes right out the door. He added that one may not bring in much but three or four and even more bring in quite a bit. He stated that we can not try and save the jobs of our employees if every other storefront on Newton-Sparta Road is empty and those businesses are not given a ratable that they could be. He doesn't want to open the Township up to a Walmart but if there is an opportunity to fill an empty storefront with a business that is perfectly harmless why would why say no or make it difficult.

In closing Mayor Smith recommended this Ordinance go back to the Land Use Board for their review and scrutiny. Mr. Walsh stated it will go back to the Land Use Board after the amendments are made. Mayor Smith suggested getting their input to design it. Mr. Walsh stated Planner McGroarty is here and working on the Master Plan and what better person do we have to take on this task.

Rick Melfi, Chair of the Economic Development Advisory Committee and he stressed "advisory". He stated there are five buildings on the northbound side, each have a driveway and parking lot. In between there is a church and then two buildings off Drake's Pond. The recommendation by the Committee formed by the Township Committee to look at Economic Development, would like to put in those shops such as a shoe store and by doing so we would need to have some sort of retail sales in that area on the northbound side. He added the other side incorporating the homes in not conducive for retail sales.

Mayor Smith asked Mr. Melfi how many businesses he feels he can bring into this area. Mr. Melfi mentioned a number of open vacancies that would be a good fit for community businesses. Mayor Smith asked Planner McGroarty as to what type of costs are involved in amending an Ordinance such as this. Mr. Walsh asked if it was working fine why were the changes made to this Ordinance. Mayor Smith stated that request was from Mr. Walsh. Mr. Walsh stated the request was for just the one side to be rezoned and not for the other to remove retail sales. Mr. Boyce stated he believes a mistake was made in eliminating retail sales and it needs to be corrected. Mr. Boyce asked Mr. John Carafello for his input on the vacant storefronts along Newton-Sparta Road.

Attorney Semrau asked if it is the consensus of the governing body to have Planner McGroarty address just the north side with respect to retail that would be consistent with the character of that area of the community. The Township Committee gave their consensus as Planner McGroarty explained with a sub-zone. Attorney Semrau stated his recommendation would be if the Committee wanted him to proceed that way, he stated the best way to do this is for him to take a draft based on what was said and go to the Land Use Board for their feedback as to what direction he has been given. He will then report back to the Township Committee with what they have to offer with regard to this Ordinance.

OLD BUSINESS (CONTINUED)**PROPOSALS FOR REPAIRS TO THE MEETING ROOM'S AUDIO SYSTEM**

Mayor Smith explained that proposals were received to repair the audio system and at the last meeting direction was given to proceed with one subject to availability of funds. Mr. Lensak was able to locate another vendor at a lower cost. The issue now is that at this time with repair of the mixer box by FTR Gold, no further repairs are needed at this time. The proposals will stay on file if they are needed.

LEAGUE OF MUNICIPALITIES CONFERENCE

Administrator Alfano stated that Land Use Board Secretary Linda Paolucci had been asked to attend the League Conference in November by Deputy Mayor Phoebus. She added that those who receive CEUs asked if they could also attend. Mr. Walsh stated it was stated that two members of the DPW and the Municipal Clerk would attend. Mr. Boyce stated that Linda Paolucci would attend as the Municipal Housing Liaison. Linda Paolucci, Diana Boyce, Deputy Mayor Phoebus will also be attending. Darren Dickinson and Steve Benziger will attend from the DPW.

NEW BUSINESS**CORRESPONDENCE FROM BYRAM REGARDING REQUEST TO THE STATE FOR REPAIRS TO THE SUSSEX BRANCH TRAIL**

Administrator Alfano stated Mayor Smith received a letter from Byram requesting a letter of support for certain repairs along the Trail. The Township Committee had no objection to this support.

MUNICIPAL COALITION - TEST BALLOON

Mr. Lensak stated on October 10th a weather balloon will be floated to simulate the 200 foot height of the proposed PSE&G towers. Mr. Carafello has graciously offered his property for a location. The activity is to bring awareness to the residents to demonstrate how high these towers will be. The police department has offered their electronic sign to post the demonstration along with the coordinated website. He added he has spoken to the media outlets and they will stop by to report on this activity. Mr. Lensak stated it will be flying from 8:00 am to 5:00 pm. A hold harmless agreement or insurance certificate has been requested by Mr. Carafello. Attorney Semrau suggested we should notify the airport.

SOLAR ENERGY EVALUATION AT DPW LOCATION - M. LENSAK

Mr. Lensak passed out information packets outlining a solar energy review which he orchestrated at no cost to the municipality. He stated he went to introduce himself to the DPW staff and in doing so spotted the roof of their building as an excellent site for solar panels. He contacted American Energy Technologies and someone came out to investigate the location. There are two options available to the Township. One is a 14kw system which would supply all the power that the DPW would require and the other is a 32 kw system which would bring some electricity down to supply the town hall as well. The review was run two ways, one was doing a 100% bond at 5.5% rate. He contacted Engineer Golden and he stated there are zero interest loan rates available with some restrictions such as quicker paybacks. He also stated that we do give up our s-Racks. If it is structured properly we can be cash positive in the very first year. By the sixth or seventh year we could pay everything off with an aggressive payback structure and everything after that would be gravy. Mr. Lensak stated this could yield about a total of \$30,000 savings.

NEW BUSINESS (CONTINUED)**SOLAR ENERGY EVALUATION AT DPW LOCATION - M. LENSAK**

Mayor Smith asked about the initial outlay of the different options. Mr. Lensak asked the Township Committee if they wish him to continue along. The town could fund this project and we would receive the income generated and that is guaranteed for the next 13-15 years. It could be put out to investors who would install the system, they receive all the benefits. After 15 years the Township would receive the system free and clear. Mr. Lensak stated he believes a hybrid of the two is best, floating a bond and use of the grants. With the grants, you sign away the s-recs and pay 80% of your energy savings.

Mr. Lensak explained he has spent a great deal of time on this project so he wants to make sure he has the endorsement of the governing body to continue. Mayor Smith stated Mr. Lensak has done a great job with this and he is very much in favor of this program, adding he feels it is a direction we should be going. Mr. Lensak stated that if we can show the DPW and Town Hall working in a positive cash flow, the next issue is going out to school boards. The Township Committee consensus was to have Mr. Lensak continue with this operation.

RENAMING OF STREETS FOR DISCUSSION - MR. WALSH

Mr. Walsh stated he received a call from Mr. Siple and he has lived in the Township his entire life and in fact the property this building is on is where he grew up. He explained this property was known as Washer's Farm. He stated the area of Highland Farms was once part of this farm. Mr. Siple asked if the Township Committee would consider renaming the streets in Highland Farms to Washer Drive and Siple Drive. Mayor Smith stated he heard from the homeowners at Highland Farms came to him because there is another Walnut in Newton, both with the Newton mailing address, creating quite confusion. They did some investigation on this and found it would require a petition from the people on that road to initiate the request. Mr. Walsh stated he will inform Mr. Siple of this and advise him to meet with the association.

COMMITTEE REPORTS

MR. BOYCE. He reported on his meetings with Superintendent Bernie Baggs and School Administrator Terry Van Auken. He mentioned the issue regarding the identification of hazardous bus routes. He stated that a year ago they asked if we would agree with their delineation of certain hazardous routes and Attorney Semrau's concern at that time it would not be wise to do that because of legal reasons. They informed Mr. Boyce they have to turn in this report by the end of October. Attorney Semrau at that time requested to see the State regulation that requires the Township to sign off. According to them we have to sign off of their list and if we don't there is a possibility of them losing State funding. Mr. Boyce added rather to have us sign off on their list they are agreeing to have us acknowledge receipt of this list.

Attorney Semrau asked to take a look at this list and the entire concept before a decision is made. Mayor Smith stated we are opening ourselves up to liability if we say we have dangerous roads in towns.

MR. WALSH. He reported the Finance Committee has been working on the budget as stated earlier. The Recreation Committee and Board of Health haven't met in the last two weeks

COMMITTEE REPORTS (CONTINUED)

MR. LENSAK. He stated he attended the Open Space Committee the other night. He reported he has spent a great deal of time on the PSE&G matter and he stressed again for the residents to be active in writing letters and making the phone calls. He mentioned that a U-Tube video is in the works regarding this issue. Mayor Smith mentioned a mailing this week sent to 98 residents directly affected by these lines trying to make them aware of rights. The letter provided them with an address to letters to the coalition firm. Mr. Lensak gave kudos to Mayor Smith for personally signing each and every letter which was noticed.

MAYOR SMITH. He reported that Yogi Classes are being conducted every Wednesday at 9:30 at the Hillside House and he encouraged everyone who can attend to do so. He mentioned his lost and found column in the e-newsletter referencing car keys and pair of glasses.

Flu inoculations are being offered free to seniors and reduced rates for others and if you are interested contact Jackie Huelbig for the many links available. The stated the Deputy Assistant Fire Chief Joe Steinwand and his wife welcomed a baby girl on September 21st and all are well.

The Fire Department will hold its Barbeque Rib Fest is scheduled for October 24th at the Fire House for \$20.00. See any fireman for ticket information.

The Sussex County Chamber of Commerce held an Idol Contest last weekend and Marie Burkus from Andover Township won.

The Senior Citizens luncheon was held last Sunday thanks to the Recreation Committee. There was a record breaking turnout. They say thank you to the department for a job well done.

Mayor Smith announced that Dan Freed, Township resident and Records Manager for the County will be receiving the Award for Excellence and Enterprise Wide Imaging Systems at the PARIS Grant Awards Ceremony in the State Assembly Chambers tomorrow and Dan who is representing Sussex County was competing against 14 other counties. A round of applause followed.

REPORT FROM THE TOWNSHIP ADMINISTRATOR Her only report was for the Executive Session portion.

REPORT FROM THE MUNICIPAL ATTORNEY He stated based on what has happened with Sparta and the Riverbank Project; he believes it is important for the Township Committee to establish a sub-committee to address what could happen. There was a significant investment made because of this potential project and there is still more information coming in. He stated that perhaps a group of people should be situated to be ready to address anything that may be forthcoming so that we are never surprised like this again.

When Planner McGroarty came this evening, Attorney Semrau explained that this is something very beneficial to this Committee. He stated he wrote a letter to Planner McGroarty and asked him to draft an Ordinance. He stated it was beneficial to have him come to this meeting and explain these type of things to the Committee who ultimately votes on these Ordinances. He stated that it is just as beneficial to send it back to the Land Use Board for constructive feedback and thoughts.

Attorney Semrau stated he appreciates it when the public gets up to talk at meetings but when it comes to the Executive Session without trying to debate this further, he stated it is a decision based on the law he makes before each meeting and he does not think it fair and he doesn't want the impression to be that anyone up here is saying to him put things on Executive Session to avoid public comment. He stated he does not receive these calls, nor would he entertain such calls. He is following what he can and can't do. The question was asked if it is this way in other towns.

REPORT FROM THE MUNICIPAL ATTORNEY (CONTINUED) He stated it is not necessarily this way. It depends on the form of government. He stated when you look at an agenda for an Executive Session for a government where you have an administration with a strong mayor and manager, seven of the ten items on this evening's agenda would have been handled by the administration. In this government, there is more involvement because everyone is equal on the Township Committee. Nothing can take place without discussion before the governing body.

He added that he is going to take a look at how other boards and committees that go into Executive Session do so in this Township. He mentioned the form of Resolution that must be adopted that is in place that specifies the section of the law for the reason we go into Executive Session. There are detailed minutes prepared by the Clerk and whether or not they can be released, there is a permanent record. We also list on the agenda as much as we can. He asked that they not be steered wrong that somehow there is something hidden.

He stated at the end of the Executive Session the Township Committee explains what was discussed and why which he does not believe happens in any other municipality. He stressed again no one has asked for anything to be listed for Executive Session for the purpose of hiding any discussion.

NEXT SCHEDULED MEETINGS: **October 26, 2009**
 November 09, 2009
 Executive Session - 6:30 p.m.
 Regular Meeting - 7:30 p.m.

RECESS CALLED AT 10:13 P.M.

MEETING RESUMED AT 10:27 P.M.

EXECUTIVE SESSION: On a motion by Mr. Boyce, seconded by Mr. Lensak, the resolution to go into executive session to discuss

Personnel Matters:

- 3. Vita Thompson, Municipal Clerk**
- 4. Tim Day, Chief Financial Officer**

Contract Negotiations:

- 1. Byram Township - Forest Lakes Section**

There will be discussion regarding the plowing and sanding of roads in this portion of Andover Township by the Byram Township Department of Public Works.

- 3. Jayme Alfano, Township Administrator**

There will be discussion regarding the transition period with this position.

- 4. Special Counsel William Friedman - Riverbank Project**

There will be discussion held regarding outstanding bills for this service.

Attorney-Client Privilege:

Pending Litigation

- 1. Roberts vs. Andover Township**

There is a pending lawsuit with issues regarding the former wall on Ballantine Road. There will be discussion concerning recent correspondence received from the Plaintiffs' attorney. It was carried unanimously. It was announced that formal action may be taken. (See Insert Attached to These Minutes)

The Committee went into executive session at 10:27 P.M. Mr. Walsh moved to adjourn executive session at 11:43 P.M., seconded by Mr. Boyce and carried unanimously.

REGULAR MEETING RESUMED

Mayor Smith remarked on the items discussed in Executive Session. He stated the issue with Byram Township is with regard to the plowing in the area of Forest Lakes. He stated a contract with Byram will be drafted for them to take care of that section.

With respect to Attorney Friedman it was decided that the bill which exceeded the maximum set by resolution will not be honored. On the Roberts Matter, he stated there were issues involved with the roadway and removal of materials and the Township Committee will ask the Municipal Engineer to have discussions with theirs to better understand what their objections are.

Attorney Semrau stated with respect to the Alfano contract discussion, that was a discussion as to based on her contract the Township Committee can do to appoint an Interim Administrator and what responsibilities could be asked of Ms. Alfano and what would not be required.

He also stated he will be taking a look at all Executive Session minutes for the Township to ensure they are done in the same manner.

Mr. Walsh moved to appoint Vita Thompson as the Municipal Clerk/Interim Administrator for a period of three months from October 1st through December 31st, 2009, seconded by Mr. Boyce and carried unanimously. Ms. Thompson will assume the responsibilities for this time period. With respect to Ms. Alfano it is understood that she will continue to assist in the transition and when Ms. Thompson is comfortable in the transition, Ms. Alfano will simply assist through December 1st as on as needed basis. None of the terms of the separation agreement have changed.

Attorney Semrau explained there was discussion earlier this evening in Executive Session regarding Karen Reed who has a position in a number of departments, including Construction, Tax and Dog Licensing. The Township Committee would like to call for a motion to submit a plan for a reduction in hours for those positions from a 35 hour work week to a 20 hour work week. Attorney Semrau stated in order to initiate the process there would have to be a motion to authorize the labor attorney to make this request to the Civil Service Commission. The Committee is not bound by this decision if it is initiate the process. Ms. Reed has been advised of the action being considered.

Mr. Walsh moved as stated above, seconded by Mr. Lensak and carried unanimously.

With regard to the position of Chief Financial Officer, Mayor Smith stated we are looking at the possibility of a shared service where we would be outsourcing a portion of the responsibilities to another municipality so that he would be servicing both. There is no action this evening.

ADJOURNMENT No further business appearing before the Committee at this time, Mr. Walsh moved the meeting be adjourned at 11:50 P.M., seconded by Mr. Lensak and carried unanimously.

Respectfully submitted,

Robert O. Smith, Mayor

Vita Thompson, R.M.C.
Municipal Clerk

TOWNSHIP OF ANDOVER

MOTION FOR EXECUTIVE SESSION "A"

BE IT RESOLVED by the Township Committee of the Township of Andover on the 28th day of September, 2009, that:

1. Prior to the commencement of this Regular Meeting, the Township Council shall meet in Executive Session, from which the public shall be excluded, to discuss matters as permitted pursuant to N.J.S.A. 10:4-12, sub-section (s):

- () b. (1) Confidential or excluded matters, by express provision of Federal law or State statute or rule of court.
- () b. (2) A matter in which the release of information would impair a right to receive funds from the Government of the United States.
- () b. (3) Material the disclosure of which constitutes an unwarranted invasion of individual privacy.
- () b. (4) A collective bargaining agreement including negotiations.
- () b. (5) Purchase, lease or acquisition of real property, setting of banking rates or investment of public funds, where it could adversely affect the public interest if disclosed.
- () b. (6) Tactics and techniques utilized in protecting the safety and property of the public, if disclosure could impair such protection. Investigation of violations of the law.
- (X) b. (7) Pending or anticipated litigation or contract negotiations other than in subsection b. (4) herein or matters falling within the attorney-client privilege.

Contract Negotiations:

- 1. ***Byram Township - Forest Lakes Section***
- 2. ***Open Space Acquisition***
- 3. ***Jayme Alfano, Township Administrator***
- 4. ***William Friedman, Special Counsel - Riverbank Project***

Attorney-Client Privilege:

- 1. ***Ray's Inn Liquor License Renewal***

Potential Litigation

Pending Litigation

- 1. ***Roberts vs. Andover Township***

There is a pending lawsuit with issues regarding the former wall on Ballantine Road. There will be discussion concerning recent correspondence received from the Plaintiffs' attorney.

- (X) a. (8) Personnel matters.

Personnel Matters:

- 1. ***Philip Coleman, Chief of Police***
- 2. ***Karen Reed, Senior Clerk-Typist***
- 3. ***Vita Thompson, Municipal Clerk***
- 4. ***Tim Day, Chief Financial Officer***

- () b. (9) Deliberations after a public hearing that may result in penalties.

- 1. The time when the matter(s) discussed pursuant to Paragraph 1 hereof can be disclosed to the public is as soon as practicable after final resolution of the aforesaid matter(s).

Adopted: September 28, 2009

Moved: Walsh Seconded: Boyce
Voted Aye: Boyce, Lensak, Walsh, Smith
Voted Nay: None
Absent: Phoebus
Resolution adopted. September 28, 2009

TOWNSHIP OF ANDOVER

MOTION FOR EXECUTIVE SESSION "B"

BE IT RESOLVED by the Township Committee of the Township of Andover on the 28th day of September, 2009, that:

2. Prior to the commencement of this Regular Meeting, the Township Council shall meet in Executive Session, from which the public shall be excluded, to discuss matters as permitted pursuant to N.J.S.A. 10:4-12, sub-section (s):

- () b. (1) Confidential or excluded matters, by express provision of Federal law or State statute or rule of court.
- () b. (2) A matter in which the release of information would impair a right to receive funds from the Government of the United States.
- () b. (3) Material the disclosure of which constitutes an unwarranted invasion of individual privacy.
- () b. (4) A collective bargaining agreement including negotiations.
- () b. (5) Purchase, lease or acquisition of real property, setting of banking rates or investment of public funds, where it could adversely affect the public interest if disclosed.
- () b. (6) Tactics and techniques utilized in protecting the safety and property of the public, if disclosure could impair such protection. Investigation of violations of the law.
- (X) b. (7) Pending or anticipated litigation or contract negotiations other than in subsection b. (4) herein or matters falling within the attorney-client privilege.

Contract Negotiations:

- 1. *Byram Township - Forest Lakes Section***
- 2. *Open Space Acquisition***
- 3. *Jayme Alfano, Township Administrator***
- 4. *William Friedman, Special Counsel - Riverbank Project***

Attorney-Client Privilege:

- 1. *Ray's Inn Liquor License Renewal***

Potential Litigation

Pending Litigation

- 1. *Roberts vs. Andover Township***

There is a pending lawsuit with issues regarding the former wall on Ballantine Road. There will be discussion concerning recent correspondence received from the Plaintiffs' attorney.

- (X) a. (8) Personnel matters.

Personnel Matters:

- 1. *Philip Coleman, Chief of Police***
- 2. *Karen Reed, Senior Clerk-Typist***
- 3. *Vita Thompson, Municipal Clerk***
- 4. *Tim Day, Chief Financial Officer***

- () b. (9) Deliberations after a public hearing that may result in penalties.
 2. The time when the matter(s) discussed pursuant to Paragraph 1 hereof can be disclosed to the public is as soon as practicable after final resolution of the aforesaid matter(s).

Adopted: September 28, 2009

Moved: Walsh Seconded: Lensak
Voted Aye: Boyce, Lensak, Walsh, Smith
Voted Nay: None
Absent: Phoebus
Resolution adopted. September 28, 2009
