

ANDOVER TOWNSHIP COMMITTEE MEETING MINUTES

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

NOVEMBER 23, 2009

6:30 P.M.

REGULAR MEETING BEGINS AT 7:30 P.M.

The regular meeting of the Andover Township Committee was called to order at 6:38 P.M. by Mayor Smith, followed by a salute to the flag.

ROLL CALL: Present: Mr. Boyce, Mr. Lensak, Ms. Phoebus,
Mr. Walsh, Mayor Smith
Also present: Attorney Semrau

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 Ms. Phoebus, the resolution to go into executive session to discuss

Personnel Matters:

1. *S. Tillotson, Deputy Court Administrator*
2. *T. Sugar, Municipal Court Administrator*
3. *T. Day, Chief Financial Officer*
4. *Police Department Staffing*

Contract Negotiations:

1. *St. Paul's Abbey - Agreement Extension*

Attorney-Client Privilege:

Potential Litigation

1. *Wolff & Samson for Krueger re Cambridge Pavers*

Pending Litigation

was carried unanimously.

(See Insert Attached to These Minutes)

The Committee went into executive session at 6:38 P.M. Mr. Walsh moved to adjourn executive session at 7:30 P.M., seconded by Mr. Boyce and carried unanimously.

REGULAR MEETING

Attorney Semrau reported on the Executive Session items beginning with discussion regarding Personnel Matters relating to the Court. That discussion was shorten as the Committee felt it was best to pursue discussion further with the Municipal Court Judge. There was discussion with Mr. Day regarding Personnel, there was discussion with Chief Coleman regarding department staffing.

Under Contract Negotiations with St. Paul's Abbey was with regard to the Lease Agreement that is in effect for 45 years. There is a due diligence period that has come close to expiring and the Township will have to either get an extension or move ahead with the project. There was then discussion correspondence the Township received from Legal Counsel regarding Cambridge Pavers application. There was no discussion regarding the application itself only acknowledging the correspondence was received.

APPROVAL OF AGENDA Mayor Smith proposed an amendment under Resolutions to add #R2009-186 which deals with the St. Paul's Abbey agreement and Attorney Semrau will explain this resolution at the time of discussion. Mr. Walsh moved to approve the agenda as modified, seconded by Mr. Boyce and carried unanimously.

APPROVAL OF CONSENT AGENDA ITEMS Mr. Walsh asked if Resolution #R2009-185 be removed to be discussed with Old Business, Item #2. Mr. Mr. Walsh moved the following consent items be approved, seconded by Mr. Boyce and carried unanimously. Mr. Walsh did abstain on Bill No. 09-01467 on the Approval of Vouchers.

***CONSENT AGENDA:**

***OTHER BUSINESS:**

APPROVAL OF VOUCHERS FOR PAYMENT

(See Insert Attached to These Minutes)

***RESOLUTIONS:**

#R2009-182 RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX AND STATE OF NEW JERSEY TO CANCEL CAPITAL APPROPRIATION BALANCES

#R2009-183 RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX AND STATE OF NEW JERSEY TO ISSUE A REFUND TO US BANK-CUST/SASS MUNI V dtr IN REGARDS TO THE REDEMPTION OF TAX SALE CERTIFICATE #09-00009 SOLD FOR DELINQUENT TAXES FOR BLOCK 109/ LOT 4.01 C0120 IN THE AMOUNT OF \$3,874.66

#R2009-184 RESOLUTION OF THE TOWNSHIP COMMITTEE 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 SALMON BROS., INC. FOR THE PERONA ROAD - PHASE I PROJECT FOR AN INCREASE IN THE CONTRACT AMOUNT OF \$6,512.00 FOR A TOTAL OF \$69,542.00

(See Insert Attached to These Minutes)

***APPROVAL OF MINUTES**

September 14, 2009 EXECUTIVE SESSIONS "A" & "B"

REGULAR AGENDA

OPEN TO THE PUBLIC Peter Spinney, 174 Andover-Sparta Road, member of the Environmental Commission and Class IV member of the Land Use Board read a statement into the record registering his objection as to the manner in which the Township Committee appears to have mishandled his appointment as a liaison from the Environmental Commission to the Land Use Board. He referenced a letter notifying him of his appointment showing an expiration date of 2009. He stated in his previous discussions with Mayor Smith he asked if he would be willing to serve out the term of the former liaison which expires 2010. When he was sworn into office the oath carried the 2009 expiration date and Mayor Smith changed the date to 2010 and initialed the change.

Subsequently, he received another letter from the Township Clerk reiterating the 2009 expiration date. He stated that it appears that the Township Committee is confused about this matter. He stated he reviewed the relevant Ordinance 74-3 and also reviewed the NJ Administrative Code. He read from both and stated that the action taken by the Township Committee contradicts the requirements of municipal and State codes. He stated that if his interpretation of the Codes is correct, the failure to correct this error could result in an improperly constituted Land Use Board and if it were to be challenged by an applicant and the challenge was upheld by the Courts, all cases heard by this Board could be invalid. He added that the Township Committee has taken a position which is contrary to the intent of the Mayor.

Mayor Smith replied saying there has been a great deal discussion and controversy on this matter with many parties being involved. He stated he reached the point where he deferred to the Township Attorney and Land Use Board Attorney and he wants this appointment to be legal and proper.

Attorney Semrau explained that Mr. Spinney would be a Class IV appointment and the Class II appointment is Mr. Huelbig who was appointed to the Open Space Committee. He stated the night of these appointments he specifically stated on the record that the term for the Class IV was through December 31, 2009. He also stated he spoke quite a bit to the Land Use Board Attorney but not about this particular set of facts and he had indicated to him that he doesn't necessarily agree. From his perspective, Attorney Semrau stated that the appointments are correct and believes that it how it was reflected on the record at that time. He stated he will continue to take a look at this but for right now the right number of members are there and when it comes to the question of the term, he believes it does expire at the end of the year but there is time to address this if need be.

Mr. Walsh stated that he believes we corrected something that was wrong to begin with because the Environmental Commission position can only be a Class II if there is a member of the Board of Education on the Board. Attorney Semrau agreed that was one of the factors and added the other factor is that you nominated a member of the Land Use Board to serve on the Open Space Committee and therefore that person qualified for a Class II position. Mayor Smith stated he would like to see both attorneys in agreement and return to the Township Committee with their findings and recommendations.

Lois de Vries, 85 Lawrence Road and member of the Environmental Commission and Chair for seven of her eight years on the Commission stated she is speaking as herself that this is an absolute disgrace. She asked Mayor Smith if he did or did not intend for Mr. Spinney to replace her as the liaison from, the Environmental Commission to the Land Use Board. Mayor Smith replied that he assumed he was appointing Mr. Spinney to replace her. Ms. de Vries stated her term expires in 2010 and the intent of the appointment is to replace her in her position as a member of the Environmental Commission to the Land Use Board. She added that if there is any discussion at all it would be whether Mr. Spinney's term ends at the expiration of her term in 2010 or his term in 2011.

OPEN TO THE PUBLIC: (CONTINUED) She stated that this is a mayoral appointment and she received a letter from the Township Clerk stating that there was discussion about this matter during the October 26th Executive Session. She stated there isn't and was not then any reason for this Township Committee to have any discussion about a Mayoral appointment. She further stated the Township Committee had no jurisdiction over these appointments. She stated this situation is unacceptable and a violation of both Township Ordinances and NJ State Statutes for the Township Committee to attempt to limit Mr. Spinney's term to 2009. She stated residents of Andover Township need to know that the Township Committee is interfering with the legitimate Mayoral appointment and they need to know that discussions regarding this appointment were held behind closed doors with no members of the Environmental Commission present. She stated she considers this a clear violation of the Open Public Meetings Act. She added there is no justifiable reason first to have had to be any discussion at all and second to have discussion in the Executive Session. She stated that since Andover Township has made a practice of requiring that the Township Committee's attorney also serve as the Environmental Commission's attorney, in matters of conflict such as this one, the Environmental Commission has been stripped of legal representation.

She clarified for the record, at the Township Committee meeting of November 9th during his report to the Township Committee, Mr. Lensak made the statement that he sent her an email two weeks prior and she had failed to respond. She stated that in actual fact Mr. Lensak's email was sent on November 3rd, two days prior to the Environmental Commission's meeting. Since the Commissioners do not regularly check their municipal emails, she distributed copies of his communication at the November 5th meeting. Ms. de Vries stated had Mr. Lensak actually attended this meeting he would have known that the Commissioners decided that a response would be drafted by Mr. Spinney which was done.

Ms. de Vries stated she believes this is one more instance in a long string of Mr. Lensak's personal harassment of her and an attempt on his part to portray distorted picture of her to the public. Mr. Lensak called for a Point of Order stating that this is a personal attack and in Roberts Rules there are no personal attacks from the public. Ms. de Vries replied this is not a personal attack but that she is making a statement.

In her last point is in the matter of complaints stating that the public should also know that Mr. Lensak has filed series of groundless accusations and complaints against her. Mr. Lensak called for a Point of Order again siting a personal attack. Mayor Smith asked Attorney Semrau to clarify the Point of Order. He replied that Mr. Lensak is saying this is a personal attack and if it is a matter pertaining to township business or anything that the public seeks to address, there is usually great latitude. From that standpoint the discussion should be directed to the Mayor and it should not be directed to anyone individually but under these circumstances, his recommendation would be to ask the person speaking to try to guide comments directly to the Chair.

Ms. de Vries continued to discuss the issue of expenditure of public funds stating the public may rightly want to ask how much taxpayer money has been expended on these pointless exercises and specifically she points that at the last meeting the Mayor talked about how each of the Committee meetings cost in the neighborhood of \$5,000. She stated at the May 26th Special Meeting there were two attorneys here for two and one-half hours plus email and phone communications with the Township Attorney on matters that were essentially had nothing to do with township business.

Mr. Walsh reviewed the cost of meetings and on average it is about \$600 to \$800. Mayor Smith stated he made the statement at the last meeting which was a rough estimate and he does believe Mr. Walsh's estimates.

Ms. Phoebus found Ms. de Vries to be extremely unprofessional, representing her position in the town extremely poorly. She stated she has gone through every bill that has been submitted to the Land Use Board from various professionals and many times where these professionals have charged this town to talk to Ms. de Vries, to respond to her, and to interpret her emails.

OPEN TO THE PUBLIC: (CONTINUED) Ms. Phoebus stated that if Ms. de Vries wants to talk about money being spent frivolously she should look to herself. Secondly, Ms. Phoebus stated that the entire Township Committee was attacked at the last Land Use Board meeting with some conspiracy theory of Ms. de Vries which has absolutely no truth to it and it has to do with figures and numbers and it is what has been pulled from the Bills List this evening. She stated she feels Ms. de Vries should spend some time actually getting the facts correct.

Anthony Massaro, 100 Current Drive stated he was sorry to see this behavior going on in this municipality and in his estimation; the Township Committee has been abused. He said he would like to see this anger cease. With regard to this appointment in question, he said that if the Mayor thought the appointment was to end 2009 and there may not be time to consider anyone else for a longer appointment, that he would accept this through 2009 and then maybe you would want someone in 2010. Mayor Smith responded by saying the term was not in his consideration, but simply he believes he was appointing Mr. Spinney to replace Ms. de Vries without consideration of the term. When the controversy began to well, that was when he deferred to the attorneys. He stressed that what he wants is for this appointment to be legal and wants two attorneys to agree on this.

Mr. Massaro read that the Township Committee is considering reducing the number of meetings. He stated his opinion that would not be a good idea. Mayor Smith stated the recommendation was to reduce from two to one meeting per month and following a survey conducted by the Clerk's office it was determined that the Township Committee meeting remain at two per month and consider cancellations of meetings on an as needed basis. Mayor Smith stated this was simply a way of thinking of possible ways where cuts can be made.

Diane Gillespie, Andover-Mohawk Road stated on September 28th she approached the Township Committee regarding the Brush, Grass & Weeds Ordinance and everyone had a different interpretation. The Ordinance was sent back to the Land Use Board and they said that interpretation of this Ordinance belongs to the Township Committee. Mayor Smith stated it was his recommendation that this go before the Land Use Board. He stated he read the Ordinance and he finds it to be clear without confusion. He stated he believes it is an enforcement issue. Ms. Phoebus agreed. Attorney Semrau recommended that since the Land Use Board put this issue in the hands of the governing body, he stated he will be ready to discuss this at the next meeting following a review of this Ordinance. Ms. Gillespie recommended when we pass Ordinances we can indicate whether it is a Committee or Land Use Ordinance. Attorney Semrau explained all Ordinances are under the jurisdiction of the Township Committee. Some that touch upon land use it is good to get feedback and direction from the Land Use Board.

Ms. Gillespie stated there was a disturbance of soil in her area and she contacted the Zoning Officer about this. She alleged inconsistency in enforcing our Ordinances. Ms. Gillespie indicated to the Zoning Officer that she believes there are wetlands on this property. Ms. Gillespie stated Mr. Cutler informed her that he is not an expert in determining wetlands and that he would need to take classes on the subject. She asked what the Township can do in the meantime. She stated that she was always made aware that when it comes to wetlands issues you have to contact the DEP unless it is a major development and you come before the Land Use Board. She stated when an individual property owner wants to do something on their property they are not aware of wetlands and the legislation regarding them.

She asked the Township Committee to talk to Mr. Cutler because he indicated to her that he would like to take classes and become certified so he can then determine if someone is encroaching on wetlands. She told him she would mention it this evening. Mayor Smith stated this is a delicate issue because the Construction Office answers to the UCC coding and the Committee does not have the right to how Mr., Cutler enforces. He stated he does agree on consistency. We can remind him that we do want to see consistency. Attorney Semrau stated that we do not want to assume that is going on.

OPEN TO THE PUBLIC: (CONTINUED) The point has been raised and he thinks in fairness he believes it is something the Administrator can speak to Mr. Cutler and get more information and report back. Ms. Thompson stated she will report back to the Township Committee. Ms. Gillespie stated that in the meantime the Township really needs to address the situation that we don't have anyone that can go out and look at something and call the DEP other than paying the engineer to do this. Mayor Smith wants to know what areas Mr. Cutler needs to be more educated in and to provide this information to the Township Committee so that he can receive this education. He stated that our employees need to have the proper tools to do their jobs efficiently.

She then stated also on September 28th she made a statement when the Committee was discussing elimination of the Administrator's job and she said that as a resident to know exactly why this position was eliminated, what the new plan of action would be, if this would save any money, and if the new plan was going to be more efficient or more beneficial and if so, how. Ms. Gillespie stated none of that has been addressed and the next thing we have a new title in Clerk/Interim Administrator. She asked what does that mean. She stated that the Township Committee is taking two full time jobs and making them into one position. She asked for someone to explain why and how this is taking place.

Mr. Boyce stated the Township Committee has asked Ms. Thompson to take on additional duties and responsibilities and she has graciously agreed to do so. He added that she is doing phenomenal job and doing so without complaint. He stated the Township Committee is going to see how this works between now and the end of the year because a decision needs to be made on the 2010 budget whether or not to have an Administrator. The cost savings when including benefits and salary would be close to \$100,000. He stated that we have survived the last two months and it is working fine. He added that the department heads have stepped up. He stated citizens' issues that might have been dealt with by the Administrator now go straight to the department head and they take care. Ms. Thompson stated residents' complaints have been addressed by the department heads and the Mayor and if they are not satisfied they come to see me. There hasn't been any issue that has come before her. Mayor Smith stated he does have several a week but nothing he can't handle.

Ms. Phoebus stated while investigating other municipalities our size, this is a practice that is quite often done. Some towns have CFO/Administrators and other Clerk/Administrators. This has been a proven economic process and she stated Ms. Thompson is doing a fabulous job as are all the other department heads and employees and if we could save \$100,000 going forward in this economy. This savings is just about a point and one-half. Ms. Gillespie stated when she brings up this issues she is not talking about any particular person, only looking at positions and she sees two full time positions becoming one. She says she knows everyone does their jobs. Ms. Thompson stated a joint position had been Andover Township's practice for many years until about 10 years ago.

Mayor Smith stated one of the things he hates to do is say he was wrong and in this case he thinks he was. He said he was the strongest advocate of keeping an Administrator and he fought hard for that, not being sure this was going to work. But in observing it, he said he has seen a number of things happening. He said that Ms. Thompson has stepped up incredibly, and we may expect to see that in a continual basis. This weekend he was on the computer sending messages for Monday reply and she was responding all day Saturday and Sunday. He also stated that the employees are stepping up and putting in extra effort. He stated that we may be going through a quiet period and things are moving smoothly. He stated from his prospective, he said things are working out this way and it is a possibility to this.

Ms. Gillespie read from a recent article in the Township Journal quoting "tension between various members of the Township Committee and between the Committee and the public is growing so that regardless of the topic, conflict is a constant. The business of running the Township however moved along." She stated she was so disturbed to read this about this town.

OPEN TO THE PUBLIC: (CONTINUED) Ms. Gillespie stated she wants people to listen to each other and try to maintain their composure. She stated that when people discuss matters it is brought down to a personal level and it shouldn't be that way. She said she is not proud of her town when she reads articles such as this. Mayor Smith commented that such behavior is not comfortable for any of us and the public. He said he has thought a lot about this and the one thing we should be thankful for is the reason for this is passion and people who care and it becomes so important, it becomes personal to them. All of us do care and that's what happens. He said he would rather she people passionately disagreeing that sitting here being apathetic and not caring. Ms. Gillespie added that when you speak passionately at some point people stop listening.

Mr. Boyce said he understands what she is saying and he agrees with Mayor Smith about the passion. He said sometimes anger comes out because people believe and sometimes there are differences of opinion. He added that he is happy to see that we continue to have a group of people coming to these meetings who care about Andover and they continue to come even if they don't always agree with the decisions made. He says when he attends the Board of Education meetings and he is usually the only person in attendance. That means their meetings are smooth and there is no fighting and public discourse, no anger and therefore no passion. He stated he prefers to see presence at these meetings and have the discourse rather than having no public interest at all. He promised they do listen, they don't always agree, but they listen.

Lois de Vries stated irrespective of what Ms. Gillespie had just said, she feels it is necessary to speak the truth to power and easiest of all would be for her to stay home and not come to the meetings and be subjected to comments made from people who despise her. However, all she wants to do now is respond to Deputy Mayor Phoebus's accusations that she is wasting money by speaking with the Land Use Board attorney. She stated every time she speaks to the Land Use Board attorney she first calls the Chair and tell him what she needs to talk to him about. Either he calls the attorney himself or he tells her to do so. Sometimes the attorneys call her. She stated she does not waste the Township's money.

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

ORDINANCES: INTRODUCTION

ORDINANCE NO. 2009-35 TO ADDRESS THE COAH REQUIREMENTS

"AN ORDINANCE OF ANDOVER TOWNSHIP TO ADDRESS THE REQUIREMENTS OF THE COUNCIL ON AFFORDABLE HOUSING (COAH) REGARDING COMPLIANCE WITH THE MUNICIPALITY'S PRIOR ROUND AND THIRD ROUND AFFORDABLE HOUSING OBLIGATIONS"

BE IT RESOLVED by the Mayor and Committee of the Township of Andover, that Ordinance #2009-35, entitled as above, be passed on first reading, to be published in the New Jersey Herald and the public hearing to be held on December 14, 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 - yes

Mr. Walsh - yes

Mayor Smith - yes

RESOLUTIONS**#R2009-186 RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX AND STATE OF NEW JERSEY REGARDING THE LEASE AGREEMENT WITH ST. PAUL'S ABBEY**

Attorney Semrau explained there was a due diligence period for the Township to make a decision whether to go ahead with the Abbey project or if they were to find out through this process there was infrastructures issues or costs that were insurmountable that the Township would have to opt against going forward. In the past year there have been expenditures for infrastructure evaluation of about \$30,000 and a number of meetings of the COAH Committee. There has been Third Round Substantive Certification with the Abbey being the centerpiece of that project but also an opportunity to get non-profit developers as an RFP was drafted. The COAH Committee has met with one the organization who has presented a proposal to develop the property. But with all of this in mind there are still many questions that the Township looks to gather in that due diligence process. It has made the Abbey quite aware of all the things that still need to be done such as Market studies and further evaluation of sanitary sewer. There was a positive letter from the DEP which addressed the wastewater management mapping that Engineer Stoner was able to successfully obtain. The Township seeks to extend this period.

In order to get that extension the Abbey has asked for the Township to do some things in order to solidify its commitment to the project. Technically, so the Township is not committed to the 45 year period without these answers, we made the Abbey aware we need to revise certain aspects of the agreement. In order to do so, in order to protect everyone's interest, we need to technically state we are going to sever the initial contract and draft a modification which he expects to have at the next meeting. This resolution gives the authority to amend the contract. This modification will extend that due diligence period. It is very important that the Township Committee was concerned that it not to be reflected that we are severing ties with this project. The commitment is very strong right now. The COAH Committee did meet earlier this evening and we are moving ahead.

Mr. Walsh moved to approve this resolution as presented, seconded by Mr. Boyce and carried unanimously.

(See Insert Attached to These Minutes)

OLD BUSINESS**CONSIDERATION OF MONTHLY TOWNSHIP COMMITTEE MEETINGS FOR 2010**

In light of the discussions earlier this evening, hearing opinions of the public and the results of the survey it was decided that the meetings will remain at two per month. The Township Committee were in full agreement.

COMMITTEE DISCUSSION REGARDING LAND USE BOARD FINANCES AS REQUESTED BY T. WALSH

Mr. Walsh stated we invited the Land Use Board to attend this meeting to discuss this matter and he is disappointed they did not come. Sometime in August there were red flags on the Land Use Board account being overspent based on what was spent and what was expected to come in. When this was brought to Board's attention, the CFO and Land Use Board Secretary took some abuse according to them and others in the office. He asked what kind of safeguards can be laid in place so this doesn't happen again. Tonight there is a \$3,500 transfer resolution because of the overextended account.

OLD BUSINESS (CONTINUED)**COMMITTEE DISCUSSION REGARDING LAND USE BOARD FINANCES AS
REQUESTED BY T. WALSH**

Ms. Phoebus stated that this basically started in August when she received an email to sign some COAH invoices. When she saw them she realized they were not for COAH. The COAH money has to be protected because in our Third Round certification we have ten units of transfer of Market to Affordable and COAH needs to see that there is money in a line item set aside that we are serious. Should we find these units the funding is there to move on them. The Finance Department contacted the Land Use Board and they felt these invoices were not Master Plan work either. It appeared that nothing was done with those bills after that.

She then received an email in November to sign some COAH invoices. Again she came in took a look at the bills and they were the same invoices. She reiterated these bills are not COAH but Master Plan. At that point, the Administrator sent an email to Planner McGroarty as to who authorized the work and where payment should come from. This being done, Planner McGroarty replied that this work was Master Plan and he didn't understand why there should be any question. The work had been authorized by the Chair of the Master Plan Committee. At that point there was enough money to pay the outstanding invoices but the same day another invoice was received by the Finance Department and then there weren't sufficient funds under the Land Use Board budget.

Ms. Phoebus stated that at the last Land Use Board meeting there was discussion stating that this governing body has cooked up this scenario for some other purpose which is not true. Ms. Phoebus stated she will take the responsibility stating that it has to do with three Banisch invoices which we could not pay. Now we have to transfer funds. Mr. Boyce stated that the Master Plan Committee is comprised of four members, Mayor Smith, Chair Christodlous, Attorney Germinario and Planner McGroarty, the two professionals who are on the clock when there is a meeting. Mr. Boyce asked when Attorney Germinario turns in his invoices are they immediately accredited to the Master Plan line item or do they get accredited to some other item. Mayor Smith replied that would be however Attorney Germinario identified his bill. Mr. Walsh added that when you have Master Plan there are contracts with Banisch with certain amounts. The problem lies in that we allowed \$2,000 for the Master Plan but under NJ law whatever funds are budgeted for the Land Use Board can be spent any way they need, except for legal. He explained that is not true budgeting and there is a need for safeguard and controls. Mr. Walsh added that if we are overspent on the budget we have to answer to Trenton.

Ms. Phoebus added that the other problem is the original contract signed in 2006 and out of that contract instead of the \$48,500 we are up to \$54,352.82. She said the contract reads that there were so many meetings that Banisch was to attend based on this contract. After that any additional meetings went on a fee schedule which was signed in 2008 and 2009. This is an added extra to the initial contract. Mayor Smith said he sits on the Master Plan Committee and he doesn't believe there were more than two possibly three meetings all year long. He also said we looked through the bills and he thought someone had determined there was some \$10,000 which was mis-assigned. Ms. Phoebus stated that was true. That is another contract which was straightened out. This amount of \$54,000 goes back to the 2006 contract plus what was spent through the normal 2007 and 2008 budgets

Mayor Smith stated he would like to ask the Land Use Board Chair to answer these questions. Mr. Walsh objected to this because the Land Use Board as a whole was given the opportunity to be heard this evening and they declined. Mr. Walsh stressed that Mayor Smith needs the consent of the governing body to open discussion with Mr. Christodlous. Attorney Semrau stated if there is an objection, you need the consensus of the governing. All members except Mayor Smith voted no to allow Mr. Christodlous to speak.

OLD BUSINESS (CONTINUED)**COMMITTEE DISCUSSION REGARDING EMAIL POLICY**

Interim Administrator Thompson stated we discussed this matter briefly a few months ago and at that time there was no action taken. This issue came to surface again through email correspondence with a local activist who asked about the policy's status. She stated that a copy of the draft was sent to him following his request. He replied to the email adding some suggestions for the Township Committee to consider. It was decided that the suggestions be reviewed and the draft may be revised including some of these ideas. The matter was tabled until such time the changes could be reviewed and a new draft prepared for the Township Committee to consider for adoption.

During this discussion a Point of Order was stated by Mr. Christodlous. Mr. Christodlous stated that he believes that according to Roberts Rules of Order the Chairman has the right to open to the public if he chooses to do so. Attorney Semrau stated he will review Roberts Rules while the meeting continues.

Returning to discussion regarding the Email Policy, Attorney Semrau stated this is something that Ms. Thompson and he have discussed and a policy was drafted because elected officials should not have discussions with a quorum which are emailed and reply to all which can constitute an open public meeting. It is a concern from a document retention standpoint for the Clerk's office and from a monitoring standpoint. He said this policy has worked well in other municipalities. There is a procedure in place but what this policy offers is the guideline for proper use of the email. Mayor Smith added that we are being applauded by some very serious critics and he believes our efforts in this direction are wise. There is a consensus to move forward on this policy.

NEW BUSINESS**CORRESPONDENCE FROM PHIL AND MARY DEACON REGARDING PROPOSAL TO BUILD A GROUP HOME**

Attorney Semrau explained that the developer of Ballantine Woods has an Affordable Housing obligation to the Township that at the time of the approval would result in one percent of the equalized value of the project. That estimate is about \$140,000 affordable housing contribution to the Township. Mr. Deacon had written a letter to the Township Committee indicating in lieu of that contribution he would be willing to build and enter into a lease with the appropriate restrictions on the site for a group home. A group home could generate four or up to five affordable housing credits. Earlier this evening the COAH Committee met with Mr. Deacon to discuss this issue further. He had a concept plan and he also indicated this is under consideration in another community where he had built and he has an affordable housing project in another town up and running.

There was much interest by the COAH Committee to explore this further and the initial recommendation was to bring it to the Township Committee and if there is further interest he would coordinate this with the Land Use Board attorney. Affordable housing units can cost \$140,000 for one unit and if are able to get four or five everyone wins. There was consensus to continue pursuit.

Ms. de Vries called for a Point of Order explaining a Point of Order takes precedence over all other business and needs to be answered immediately. Mayor Smith stated he will stop the meeting to allow Attorney Semrau to research Roberts Rules. Mr. Lensak stated he has several issues he can address while waiting for Attorney Semrau.

After conferring with Attorney Semrau, Mayor Smith stated that in terms of efficiency and to allow Mr. Semrau time to read the rules he would like to proceed with the meeting in the sake of time.

RESOLUTIONS**#R2009-185 RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX, STATE OF NEW JERSEY WITH REGARD TO THE 2009 BUDGET APPROPRIATION TRANSFER - \$10,900.00**

Mr. Walsh moved to approve this resolution as presented, seconded by Mr. Boyce and carried unanimously.

(See Insert Attached to These Minutes)

OTHER BUSINESS**APPROVAL OF RAFFLE LICENSE - ST. JOSEPH'S HOME & SCHOOL ASSOCIATION OFF PREMISE MERCHANDISE R.L. #892 - TO BE HELD AT PERONA FARMS ON FEBRUARY 27, 2009**

Mr. Walsh moved to approve the foregoing license, seconded by Mr. Boyce. Roll call vote:

Mr. Boyce - yes

Mr. Lensak - yes

Ms. Phoebus - abstain

Mr. Walsh - yes

Mayor Smith - yes

COMMITTEE REPORTS:

MR. LENSAK. Mr. Lensak remarked that after the last meeting and reading the report in the Township Journal, he was appalled. He stated we are to be working together for the betterment of the town and not for our personal agendas and not to take snipes at each other. In his research he found that in 1774 the front benches of parliament are spaced one foot than two swords lengths and he believes we have come further than that. To quote them it said he who digressed from the matter to fall upon the person ought to be suppressed by the speaker no nipping words must be used. A council must be perceived as being genuinely open to the verse views while at the same time take a zero tolerance attitude toward disruptive behavior. A member can condemn the nature or likely consequences of the proposed measure in strong terms by must avoid personalities, and under no circumstances can attack or question the motives of another member. The measures not the member is the subject of the debate. Therefore remarks about another individual can be reasonably considered as negative are out of order. People can say whatever they want about each other outside of the council chambers but during a meeting negative personal comments are not permitted.

At the last meeting there were some reports or words out of the audience that he was incompetent, that he did not know what he was talking about when he said "were the commercial and residential aspects of Master Plan." Mr. Lensak continued to say the Master Plan shall generally comprise a report or statement of Land Use of maps, diagrams and texts. A land use plan element shows the existing and proposed location extent and intensity of development of land to be used in the future for varying types of residential, commercial, industrial, agricultural, recreational, educational and other public and private purposes. Mr. Lensak read that a Master Plan Subcommittee consists of the following members, no less than seven, no more than nine: Representative from the Land Use Board; Representative from the Township Committee; Township or Land Use Board Engineer (who he heard was removed due to budgetary constraints); Land Use Board Secretary; Township Administrator or Manager; Two Representatives from the Business Community; Representatives from the Open Space Committee, Farmland Preservation Representative; the County Planner should be contacted on a regular basis and advised of updates to ensure consistently with the County Plan with an occasional invitation to attend the Municipal Master Plan Subcommittee meetings.

COMMITTEE REPORTS: (CONTINUED)

MR. LENSAK. He reported on the PSE&G hearings were concluded today and the attorneys did a great job bringing up some major points. He thanked the press for picking up on this and reporting it in a fair and honest manner. It is now in the hands of the Board of Public Utilities. Mayor Smith added that there are reams of information daily on the hearings, results and opinions. He applauded NJ Herald reporter Seth Augenstein for doing an exceptionally good job of summarizing that into a readable understandable version. Mayor Smith stated he took his article and put it in his email.

Mr. Lensak stated he should be spending his time working on this BPU and solar projects instead having to spend hours trying to work on everything so much less important.

MS. PHOEBUS. She reported when she attended the League of Municipalities Conference she sat in on some seminars. The first one was COAH and the Master Plan for the State of New Jersey of which the Acting Director of the DEP and DCA both said they probably won't have a job as of January. They added that they are in lame duck session and nothing is getting done. There seems to be a moratorium that Governor Elect Christie has put everyone on and everything is on hold. They are unsure of what will happen with COAH. The only thing he can do is take care of the amount of people that work for COAH. One of the most fascinating seminars pertained to Sustainable Energy Grants. She stated that this town can apply for these grants and Walmart has given a total of \$300,000 in 2010 for municipalities who make application. There is also a huge amount of funding provided by the Federal government has given to the State of New Jersey on the Stimulus Package to go Green. It will also help individual homeowners if they wish to become more "Green".

She also attended a meeting on Septics and Wastewater Treatment Plants. She found it very educational and she found out that the State's Master Plan for their Water Quality which the County Freeholders are currently looking at, and which they are in no rush to pass, part of that states that everyone of else with a septic will have to get a license for it. You will have to pay a licensing fee of \$15 to \$25 and every three years you will have to have the septic pumped. If you do not do this the town has the ability to fine you. What they are fighting is they would also like to see that not only you have them pumped but also inspected because they want these septics in proper working order. There will be a mandate that each municipality will be asked to pass as an Ordinance. She found the idea of keeping our septics working properly a good one but she disagrees with the methodology the State is using because the plan does not compensate between a one member household and a five member household. One person should not be on the same plan as a five member household. They also are looking at new septics for homes that are mini-wastewater treatment plants. The State does not want to see large lot zoning and they realize that some towns are looking to do that. They want to see better septics in place for future growth.

MR. BOYCE. He was given the Andover Regional School District Comprehensive Annual Financial Report for fiscal year ending June 2009. He handed it to the Clerk for proper record keeping. They appear to have a very strong audit. He then spoke about the Land Use Board and the differences of opinion. He stated he did attend the Land Use Board meeting and sat quietly and listened. He was dismayed by some of the comments made, particularly those made by the Chairman who strongly urged the members to reject the Township Committee's invitation to meet. In fact he stated this would set a dangerous precedent for Land Use Boards in the future if they honored the Committee's request. Mr. Boyce stated in his opinion they did set a dangerous precedent themselves by refusing to meet. They did this on the recommendation of the Chairman that such a meeting was interfering in the Land Use Board's job of creating a Master Plan. He stated this Committee is not interfering with the creation of the Master Plan at any time by any member here. He stressed that they are trying to manage a budget and it is very difficult to do so.

COMMITTEE REPORTS: (CONTINUED)

MR. BOYCE. He added that instead of voting to me with the Township Committee they voted to have their own meeting without the entire Township Committee present but inviting a member of the Finance Committee. What is strange about that two members of the Township Committee are on the Land Use Board and by inviting a member of the Finance Committee that would violate the Open Public Meetings Act. He asked how that would be acceptable to the Chair but accepting our invitation would set a dangerous precedent. He stated he does not fault the members of the Land Use Board for this stating he believes they have been kept in the dark about how much money they are spending on the Master Plan. During the Land Use Board meeting the Chair stated he has no idea how much the Master Plan will cost this town and neither do the members of the Land Use Board. He had also stated he has no idea how much the town will need to spend to implement the ordinances that the Plan requires. The only person who knows the answer is the person we are paying to create it, Planner McGroarty. He does not fault Mr. McGroarty for this, he was given a contract and we should abide by it but he wishes we had done a better job planning and budgeting for this and understanding what this will cost.

He also mentioned a contradiction he did not understand saying that the Chairman stood before this Committee in June chastising this Board for passing the 2009 Budget because it included a modest tax increase. He said "I can't believe this Committee didn't find more cuts in this year's budget. Many taxpayers are retired and on fixed incomes and they can't afford to pay more." Mr. Boyce stated how can we find these budget cuts if we cant do a better job managing our expenses. It was a month later when the Chair of the Land Use Board stood before this Board once again chastising us for looking to save \$100,000.

Mr. Christodlous called for a Point of Order. Attorney Semrau stated a Point of Order when someone is specifically mentioned that person can be heard at an appropriate time. Mr. Boyce stated he was fine with that because he would like an explanation as to how he could stand before this Board in June and say I can't believe you couldn't find more budget cuts and then be so careless and not manage your budget better with the Master Plan. Mr. Boyce stated Mr. Christodlous came back in July and chastised the Committee because they were trying to find \$100,00 savings by eliminating the Administrator's position and he called that foolish. Mr. Boyce stated we have been managing quite well for two months and it is not foolish, but working and it will continue to work.

Mr. Boyce stated he would like to see better cooperation between the Township Committee and the Land Use Board in making sure their needs are met while at the same time honoring our commitment to better serve the taxpayers.

Mayor Smith announced that Attorney Semrau has ruled on the Point of Order and he agrees that a person can be recognized if an issue is addressed specifically to a particular individual, otherwise the majority of the full membership to permit someone to have the floor when the matter is not open to the public. Attorney Semrau explained when the meeting is open to the public it is the Chair's discretion who to recognize. When the matter is closed to the public and someone says Point of Order, they have the right to explain why they want to be heard but they would need the approval of the majority of the Township Committee to be heard. When it is a particular person identified, that person by way of a Point of Order may be heard.

Mayor Smith recognized Mr. Christodlous. Attorney Semrau stated he may speak limited to only Mr. Boyce's comments. Mr. Christodlous stated that refusing to let members of the public speak can itself cause a great deal of controversy. He further stated that it was not his motion, but a motion voted on by Mrs. Boyce and it was unanimous not to appear before the Township Committee.

COMMITTEE REPORTS: (CONTINUED)

MR. BOYCE. He stated it was done because the Land Use Board felt that the best way to deal with this was to have a smaller, controlled meeting and no one refused to meet. He stated that was a false statement and never said. He stated he does not have the power to sway nine board members into not agreeing to a joint meeting. Mr. Christodlous stated in his opinion the Township Committee is using the budget to impact the Master Plan.

He further stated that he knew there was approximately \$10,000 needed to complete the Master Plan and he requested that amount. He said he believes they received \$2,000. He stated the Township Committee is obligated to encumber the \$48,500 which was not done. Mr. Walsh and Ms. Phoebus commented that was already paid. He asked to see an accounting of that. He stated that until tonight he did not know we were over budget. Mr. Boyce stated as Chair he should know this. He replied that he has a report from CFO Day showing that we had spent \$46,000 on the Master Plan and then there is a letter from Attorney Semrau saying that \$10,000 was inappropriately charged dropping it to \$36,000. He stated there are two separate contracts not one. The bill that Ms. Phoebus refers to he has not seen. If discussions were held with Banisch no one told him about them. He wanted to settle this by sending the information to Planner McGroarty and he never heard anything and tonight he finds out that someone else called him to obtain this information.

Mr. Christodlous asked Mr. Walsh what he meant by abuse of employees and he does not know what he is referring to. Mr. Boyce stated this goes back to when the Finance Committee sent a memo to department heads and asked them not to move money from one line item to another and he came to the building and threatened to turn certain employees in to the DCA if they did not abide by his Mr. Christodlous' wish to transfer money. He said that is a far stretch from what actually happened. CFO Day remarked the incident occurred on August 31st at 1:15 pm.

Mr. Boyce stated again we are trying to manage the budget and he would like to see cooperation from the Land Use Board in helping do this. When they try to put measures in place to help manage the budget, it appears that Mr. Christodlous does not want to cooperate. Mr. Christodlous remarked that in speaking of cooperation, why did he have to come to this meeting to find out they did not accept the invitation to come to before the Land Use Board stating someone should have informed him. Members of the Township Committee were not aware of such an invitation.

The Township Committee and Mr. Christodlous continued to discuss the finances of the Land Use Board for the Master Plan and COAH. Following this discussion Mayor Smith requested the Finance Department document these line items to the current date and he would like to make this available to everyone to review and comment. Mr. Christodlous stated he has asked many times to provide all members of the Planning Board with monthly statements of the expenses and it has never happened in the past two years. Mr. Boyce stated this is something that will be worked on.

MR. WALSH. He reported on December 11th there is a Holiday Party scheduled for all employees and volunteers, 6:00 at the Barn. December 6th is the Children's' Party at the Barn. There is nothing to report on the Board of Health at this time.

MAYOR SMITH. He heard late about a Bake Sale at the Subacute Center but he did attend. The nurses and employees volunteered their time and money to bake and the proceeds go back to the patients and the residents of the center. They also asked the patients about their Wish List for the Holidays. There is another planned for December 18th. Mr. Lensak suggested that if the Wish List was made available perhaps people can contribute items they request.

COMMITTEE REPORTS: (CONTINUED)

MAYOR SMITH. He stated he performed his fifth ceremony last Saturday and there was standing room only. His last ceremony will be on December 4th and this one will be in Spanish which he does not speak. It will be done through an interpreter but he will say "you may now kiss the Bride " in Spanish.

He announced that Cartridge World will have there ribbon cutting ceremony on December 11th at 3:00. He took his cartridges over and it is a 30 to 40% savings. He stated the quality is excellent.

The Fall Newsletter will be in the mail on Wednesday and the Seniors once again volunteered their time to do the folding and stamping.

He reported on the Seniors stating their Thanksgiving Luncheon at the Farmstead and the meal was outstanding, the atmosphere and service was wonderful. They will have their Christmas Party on December 7th at Sheridan's.

He wished everyone a very Happy, Healthy and thankful Thanksgiving.

REPORT FROM THE CLERK/INTERIM ADMINISTRATOR She reported she attended the League of Municipalities last week. She attended seminars regarding Ethics, Finance, OPRA and Email procedures. A report will be provided to the Township Committee. A public hearing will be held on December 14th with regard to the Service Electric Cable Television Franchise Renewal. The application is available in the Clerk's office for review.

She informed everyone that on the second floor by the Finance Office there is a container for collection of non-perishable food items. The items are brought over periodically to the Bodhi Monastery. All the food pantries in the area are suffering and in great need of donations. The municipal employees contribute regularly and any donations are greatly appreciated.

She then stated she will be meeting with Newton Town Manager Tom Russo. They will be renovating their court room in the near future and he would like to discuss the possibility of using our facilities during that time. The meeting is scheduled for November 30th at 2:00.

REPORT FROM THE MUNICIPAL ATTORNEY He reported that this evening a point was raised that in the past the Committee has not had to resort to the Roberts Rules. He said it is there to keep order at meetings when there is a dispute. He finds in his experience that it is almost more disruptive than productive. He added Andover has done a good job over the years with an open form of meetings but when these rules are invoked it can disrupt the flow of the meeting.

He referenced that earlier this evening, Mr. Spinney read a letter but he said it isn't always that easy. He stated there were comments that somehow we are usurp the Mayor's authority or some kind of conspiracy. He said this is an issue that he will take another look at as the Mayor has asked. He stated there was a resignation from the Land Use Board and it required a bit of attention. The resignation asked for a specific appointment. That also required some attention. The person who sent the resignation, we had to identify when that resignation became effective because when it was sent in, the person attended a meeting for the Land Use Board. Then there were questions that with all the different gyrations as to whom the Mayor could it has an effect on how the Land Use Board is made up.

REPORT FROM THE MUNICIPAL ATTORNEY (CONTINUED) He said it is his responsibility to give advice to the Mayor as to how that appointment process can work and what is permitted to do. In order to properly examine this he asked the Clerk for the list of the Environmental Commission, the Land Use Board and he reviewed it with Mr. Germinario. They spoke about many scenarios but not this specific one. Attorney Semrau stated that by his understanding and everything before him there was a certain recommendation. Nothing was done deliberately or harmful, the only thing done was the right thing. He added that it is very easy to correct if it isn't right. There was an executive session about pending litigation regarding the Land Use Board and if we are going to talk about these type of issues, we need to make sure moving forward that the Board is configured correctly. Abilities were not discussed but he made it clear the position needs to be filled correctly. There are pending applications and we need to assure that the Board is configured right and he wanted everyone to understand what needs to be done to ensure it is right.

NEXT SCHEDULED MEETINGS: **Monday, December 14, 2009**
 Monday, December 28, 2009

Executive Session - 6:30 p.m.
Regular Meeting - 7:30 p.m.

ADJOURNMENT No further business appearing before the Committee at this time, Mr. Walsh moved the meeting be adjourned at 9:51 P.M., seconded by Mr. Boyce and carried unanimously.

Respectfully submitted,

Robert O. Smith, Mayor

Vita Thompson, R.M.C.
Municipal Clerk

TOWNSHIP OF ANDOVER

MOTION FOR EXECUTIVE SESSION

BE IT RESOLVED by the Township Committee of the Township of Andover on the 23rd day of November, 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. *St. Paul's Abbey - Agreement Extension***

Attorney-Client Privilege:

Potential Litigation

- 1. *Wolff & Samson for Krueger re Cambridge Pavers***

Pending Litigation

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

Personnel Matters:

- 1. *S. Tillotson, Deputy Court Administrator***
- 2. *T. Sugar, Municipal Court Administrator***
- 3. *T. Day, Chief Financial Officer***
- 4. *Police Department Staffing***

- () 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: November 23, 2009

Moved: Walsh Seconded: Phoebus
Voted Aye: Boyce, Lensak, Phoebus, Walsh, Smith
Voted Nay: None
Abstained: None
Resolution adopted. November 23, 2009
