

MINUTES FOR
MONTGOMERY TOWNSHIP COMMITTEE
November 13, 2008

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

TOWNSHIP COMMITTEE: Mayor Birge, Committeemembers Wilson, Caliguire and Joye
Deputy Mayor Fay was absent

Also present were:

TOWNSHIP ATTORNEY - Kristina P. Hadinger, Esq.

TOWNSHIP ADMINISTRATOR - Donato Nieman

TEMPORARY CHIEF FINANCIAL OFFICER - Walter Sheppard

TOWNSHIP CLERK - Donna Kukla

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

3. Mayor Birge led the Salute to the Flag.

4. **AFFORDABLE HOUSING BILL**

Committeewoman Wilson reported on a letter from Senator Bateman regarding a bill that he is sponsoring revising laws that govern the provision of Affordable Housing, reestablishes regional contribution agreements and repeals certain aspects of COAH law that is in effect now.

5. **SIDEWALKS AND DRIVEWAY APRONS**

Administrator Nieman reported on a complaint letter from Eric Bulger, resident of Harlingen Road, regarding the sidewalk and driveway apron work. He stated that he had met with Mr. Bulger and the Engineering Department and Mr. Bulger was now fine with the work being done.

6. **PUBLIC COMMENT**

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

7. **REVIEW OF AUDIT REPORT**

Bob Morrison, Township Auditor, reviewed the Audit Report for the year ending December 31, 2007. The financial statements are fairly stated, all New Jersey statutory accounting standards and requirements were followed in their preparation, and the resulting presentation was in complete compliance with New Jersey law relating to current fund, utility, trust and general capital financial reporting. The numbers themselves, based on the audit, had only minor changes from those that were presented to the Governing Body as unaudited at the beginning of the budget cycle. The report contained six (6) recommendations. The major concern was the lack of a general ledger system. This concern was being addressed at present.

8. **RESOLUTION #08-11-323 - REVIEW OF ANNUAL AUDIT REPORT OF 2007**

WHEREAS, N.J.S.A. 40A:5-4 requires the governing body of every local unit to have made an annual audit of its books, accounts and financial transactions, and

WHEREAS, The Annual Report of Audit for the year 2007 has been filed by a Registered Municipal Accountant with the Municipal Clerk as per the requirements of N.J.S.A. 40A:5-6, and a copy has been received by each member of the governing body; and

WHEREAS, The Local Finance Board of the State of New Jersey is authorized to prescribe reports pertaining to the local fiscal affairs, as per R.S. 52:27BB-34; and

WHEREAS, The Local Finance Board has promulgated a regulation requiring that the governing body of each municipality shall by resolution certify to the Local Finance Board of the State of New Jersey that all members of the governing body have reviewed, as a minimum, the sections of the annual audit entitled:

General Comments
Recommendations

and

WHEREAS, The members of the governing body have personally reviewed as a minimum the Annual Report of Audit, and specifically the sections of the Annual Audit entitled:

General Comments
Recommendations

as evidenced by the group affidavit form of the governing body; and

WHEREAS, Such resolution of certification shall be adopted by the Governing Body no later than forty-five days after the receipt of the annual audit, as per the regulations of the Local Finance Board; and

(Item #8 Cont.)

WHEREAS, All members of the governing body have received and have familiarized themselves with, at least, the minimum requirements of the Local Finance Board of the State of New Jersey, as stated aforesaid and have subscribed to the affidavit, as provided by the Local Finance Board; and

WHEREAS, Failure to comply with the promulgations of the Local Finance Board of the State of New Jersey may subject the members of the local governing body to the penalty provisions of R.S. 52:27BB-52 - to wit:

R.S. 52:27BB-52 - "A local officer or member of a local governing body who, after a date fixed for compliance, fails or refuses to obey an order of the Director of Local Government Services, under the provisions of this Article, shall be guilty of a misdemeanor and, upon conviction, may be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than one year, or both, in addition shall forfeit his office."

NOW, THEREFORE, BE IT RESOLVED, That the governing body of the Township of Montgomery, hereby states that it has complied with the promulgation of the Local Finance Board of the State of New Jersey dated July 30, 1968 and does hereby submit a certified copy of this resolution and the required affidavit to said Board to show evidence of said compliance.

BE IT FURTHER RESOLVED That the Montgomery Township Committee has reviewed and approves the Corrective Action Plan as filed.

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

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

9. **COAH DISCUSSION**

- 9-1. Lori Savron, Township Planning Director, presented a PowerPoint presentation on COAH and explained changes.
- 9-2. Richard Coppola, Township Planner, explained the income levels for each of the categories of low and moderate income housing. He discussed the rules, and stated that some of the rules were somewhat unworkable and unreasonable. The number of units being required of the towns was relatively high and the limitations of items that have to be met within this mixture of requirement made it very inflexible and difficult. At the same time, this town was the first town to voluntarily comply with the obligation back before COAH was even operative and has done a very responsible job.
- 9-3. Ms. Savron gave a description of some of the jobs that people who live in the affordable housing units in town such as: customer service rep., health service provider, child care worker, crossing guard, bus driver, mechanic, maintenance worker, teachers and law clerks.
- 9-4. Mr. Coppola stated the difficulty that the Township was facing was that there are rules that were still being interpreted, some that haven't been adopted yet, and that the rules need to be modified. Yet, COAH and the Courts have not agreed to extend the time period for submittal of a housing plan beyond the December 31 deadline. Any town that has not submitted a housing plan will be sued for non-compliance, and those towns who do submit a housing plan will have that plan scrutinized for compliance by anyone who files an objection.

Mr. Coppola explained the goals of the COAH work group:

1. to protect against a builder's remedy lawsuit because the town totally loses home-rule and anything can go;
 2. to provide most of the affordable housing and locations that are in proximity to job opportunities and existing public transit services;
 3. to provide affordable housing development in the manner that is compatible with the existing development pattern of the Township;
 4. to provide a plan that supports smart growth and context sensitive design while at the same time providing affordable housing;
 5. to provide a plan that promotes the renovation and preservation of existing architecturally significant buildings and/or the development or redevelopment of existing in-fill properties or existing developments in need of renovation. Part of this effort involved meeting with any and every body that would sit down, had land, maybe needed some upgrade, etc.;
 6. to provide a plan that safeguards the quality of life and other interests of the citizens of the Township;
 7. to provide a plan which provides the greatest amount of flexibility for future changes to the plan should the rules change. Because of the Township's past compliance, it is in an enviable position in terms of what is carried forth from prior years. The Township's obligation for COAH housing units, at present, is 501 units minus the 75 credits carried from prior round. There is a credit of 52 from existing units already constructed and there are 106 family rental bonuses, so the Township is satisfying their total obligation with a total of 274 new COAH units.
- 9-5. Committeeman Caliguire asked how the projected growth number was arrived at. Mr. Coppola explained that COAH took a straight line projection, both residential and non-residential. They went from 1993 to 2003 and then did a straight line project through the end of 2018. This penalized the towns who met their obligations, built a substantial number of dwellings based on that obligation and launched them onto this trajectory.

(Item #9 Cont.)

- 9-6. Mr. Coppola explained that of the units constructed within the town, to satisfy the obligation, 50% of them have to be family units. He further explained that, by COAH definition, age-restricted units, accessory apartments and group homes are not considered family units. The Township is required to have 25% of the units as rental units. For the next 25% of the units, the Township is entitled to get bonus rental credits. Family rental units will be worth 2 to 1 in bonus credits. No town can get more than 25% credits of their obligation. He reviewed the various categories of affordable housing units and what the rules and regulations are for each category.
- 9-7. Mayor Birge asked how could they defend this in Court, if the Fair Housing Act says COAH was not supposed to bring additional tax burden to taxpayers. Mr. Coppola stated that this is the way these rules are and there is no way around it. He stated that the Township reserved the right to amend or withdraw the plan.
- 9-8. Committee agreed that Mr. Coppola should put the Van Cleef property in the plan, by Montgomery Shopping Center, and take 30 units out of Skillman Village.
- 9-9. Attorney Hadinger stated that it was Governor Corzine who decreed that the state needed 115,000 affordable housing units, with input from various sources.
- 9-10. Clem Fiori, Open Space Committee Chairman, stated that the Open Space Committee was very concerned that, in the Town's perception over the years since 1997, the Town assumed that, aside from the 40 acres which had to be sacrificed for Presbyterian Homes for Stonebridge, the rest of the land was going to be preserved for Open Space and now affordable housing was being considered for the site.
- 9-11. Sarah Roberts, Harlingen Road, stated the Township's affordable housing plan had been put together very well under extreme pressures but she had concerns about the 1860 House property being used for affordable housing. She explained that preserving land along the Millstone River had been very important to the Township and she thinks that it should be continued. She stated that she thought including affordable housing in the Harlingen Village development was a good idea.
- 9-12. Daniel Ungar, Brandywine Road, asked if the Township was off the hook for the remainder of the 326 affordable housing units that are based on faulty growth planning by the State, if between now and 2018 only a fraction of that growth occurs. Planner Coppola responded that the Township would have to meet this number no matter what happens.
10. **CONSENT AGENDA** - All matters listed hereunder are considered to be routine in nature and will be enacted in one motion. Any person may request that an item be removed for separate consideration.

A. **RESOLUTION #08-11-325 - RAFFLE LICENSE #660 - East Mountain Hospital, Inc.**

BE IT RESOLVED By the Montgomery Township Committee that approval is hereby given for the East Mountain Hospital, Inc. to conduct a Raffle under License #660 on January 15, 2009 at the East Mountain Hospital, East Mountain Road, Belle Mead, NJ. The time for this Raffle will be at approximately 12:00 noon

B. **RESOLUTION #08-11-326 - AWARD OF BID - In-Car Digital Video Recording System**

WHEREAS, The following bid for the In-Car Digital Video Recording System was received and publicly opened on November 5, 2008:

<u>BIDDER</u>	<u>AMOUNT</u>
L3 Communications Mobile Vision, Inc.	\$6,064.95

WHEREAS, It is the recommendation of the Purchasing Agent that L3 Communications Mobile Vision, Inc. be awarded the bid; it being the lowest responsible bidder; and

WHEREAS, There exists an account 04-216-55-901-1295A which will fund these goods; and

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

NOW, THEREFORE, BE IT RESOLVED By the Montgomery Township Committee that the order for the In-Car Digital Video Recording System is hereby awarded to L3 Communications Mobile Vision, Inc., 90 Fanny Road, Boonton, NJ 07005 in the amount of \$6,064.95

BE IT FURTHER RESOLVED That the Purchasing Agent is hereby authorized to sign said Purchase Order.

C. **RESOLUTION #08-11-327 - AUTHORIZING PAYMENT OF INVOICE - NPDC WTP Waterline Extension Project**

BE IT RESOLVED That The Montgomery Township Committee authorizes payment of invoice #81000006 submitted by van Note Harvey Assoc., PC in the amount of \$1400.00 for preparation of a map and legal description for the waterline extension project for the NPDC wastewater treatment plant and Skillman Farm.

- 10-1. Committeewoman Wilson moved the adoption of the **CONSENT AGENDA**. The motion was seconded by Committeeman Caliguire and carried on the following:

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

11. **PAYMENT OF BILLS**

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

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

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

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

11-1. Committeeman Caliguire moved the adoption of the foregoing resolution. The motion was seconded by Committeewoman Wilson and carried on the following:

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

12. **COUNTY OPEN SPACE COMMITTEE MEETING**

Committeemembers Wilson and Caliguire reported on the meeting of the County Open Space Committee. They were given background on the NPDC/Skillman Village property. They stated that it was their perception that the County Open Space Committee was very interested in pursuing helping with this property and would be making a recommendation to the County Board of Freeholders.

13. **SENATE BILL 2292**

Committeewoman Wilson spoke about the bill and stated that this bill was probably not going anywhere. She did not see any members of the Majority party as sponsors or co-sponsors but there was an awful lot in it that addresses some of the more urgent concerns. She suggested that the Township Committee approve a simple resolution at this meeting conveying support to the sponsors.

There was discussion about having the New Jersey League of Municipalities voice the support of all of the municipalities for this bill.

13-1. **RESOLUTION #08-11-328 - ENDORSING S-2292 - AFFORDABLE HOUSING**

WHEREAS, The recent enactment of P.L. 2008, c.46 (known informally as A-500) and regulations adopted on June 2, 2008 and September 22, 2008 by the Council on Affordable Housing (COAH) have radically altered housing policy in New Jersey in ways that may prove unfortunate to many municipalities in this State; and

WHEREAS, In response to the overwhelming burdens that A-500 and the new COAH regulations have placed on property taxpayers, Senators Christopher Bateman and Philip Haines have introduced Senate Bill 2292; and

WHEREAS, S-2292 addresses many urgent concerns including unfunded mandates, the ability to use regional contribution agreements, and elimination of the growth share approach which is unfair and unreasonable for many municipalities such as Montgomery Township.

NOW, THEREFORE, BE IT RESOLVED That the Montgomery Township Committee wholeheartedly endorses S-2292 and beseeches the leadership of the Legislature to enact Senate Bill 2292 to repair these deeply flawed housing laws.

BE IT FURTHER RESOLVED That this resolution be forwarded to Governor Jon Corzine, Senator Christopher "Kip" Bateman, Assemblyman Peter Biondi, Assemblywoman Denise Coyle and the State League of Municipalities.

13-2. Committeeman Caliguire moved the adoption of the foregoing resolution. The motion was seconded by Committeeman Joye and carried on the following:

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

14. ORDINANCE #08-1304 - LDO - Development Fees - Public Hearing - Tabled

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

AN ORDINANCE AMENDING AND SUPPLEMENTING
CHAPTER XV, "THE AFFORDABLE HOUSING ORDINANCE",
OF THE CODE OF THE TOWNSHIP OF MONTGOMERY (1984)
COUNTY OF SOMERSET, STATE OF NEW JERSEY WITH
REFERENCE TO SATISFYING THE REQUIREMENTS OF THE
NEW JERSEY COUNCIL ON AFFORDABLE HOUSING (COAH)
AND SPECIFICALLY BY AMENDING SECTION 15-15,
ENTITLED "DEVELOPMENT FEES"

B. Attorney Hadinger explained that this was the most recently introduced Development Fee ordinance, and Township Planner Cindy Coppola had some tweaking to do on this ordinance after conversations with COAH. She recommended that the Township Committee let this ordinance die and introduce a new ordinance.

C. The Clerk read the following report from Planning Board:

"On October 27, 2008, the Planning Board reviewed the abovereferenced ordinance. The Board found the ordinance consistent with the Master Plan and recommended adoption."

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

E. BE IT RESOLVED By the Montgomery Township Committee that the Township Committee's deliberation on the foregoing ordinance be continued to a date uncertain.

14-1. Committeewoman Wilson moved the adoption of the foregoing resolution. The motion was seconded by Committeeman Joye and carried on the following:

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

15. ORDINANCE #08-1306 - Development Fees - Introduction

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

AN ORDINANCE AMENDING AND SUPPLEMENTING
CHAPTER XV, "THE AFFORDABLE HOUSING ORDINANCE",
OF THE CODE OF THE TOWNSHIP OF MONTGOMERY (1984)
COUNTY OF SOMERSET, STATE OF NEW JERSEY WITH
REFERENCE TO SATISFYING THE REQUIREMENTS OF THE
NEW JERSEY COUNCIL ON AFFORDABLE HOUSING (COAH)
AND SPECIFICALLY BY AMENDING SECTION 15-15,
ENTITLED "DEVELOPMENT FEES"

B. BE IT RESOLVED By the Township Committee of the Township of Montgomery that the foregoing ordinance be hereby passed on first reading and that the same be published in an official newspaper as required by law together with a Notice of Pending Ordinance fixing December 4, 2008 at approximately 7:00 p.m. as the date and time when said ordinance will be further considered for final adoption.

15-1. Committeewoman Wilson moved the adoption of the foregoing resolution. The motion was seconded by Committeeman Joye and carried on the following:

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

16. RESOLUTION #08-11-324 - REQUESTING THAT COAH REVIEW AND APPROVE MONTGOMERY TOWNSHIP'S DEVELOPMENT FEE ORDINANCE

WHEREAS, The Township Committee of the Township of Montgomery in Somerset County petitioned the Council on Affordable Housing (COAH) for Third Round Substantive Certification on December 1, 2005; and

WHEREAS, P.L. 2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), permits municipalities that are under the jurisdiction of COAH or of a court of competent jurisdiction and that have a COAH-approved spending plan to impose and retain fees on residential and non-residential development; and

WHEREAS, Subject to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), N.J.A.C. 5:97-8.3 permits a municipality to prepare and submit a development fee ordinance for review and approval by the Council on Affordable Housing (COAH) that is accompanied by and includes the following:

(Item #16 Cont.)

- A description of the types of developments that will be subject to fees per N.J.A.C. 5:97-8.3(c) and (d);
- A description of the types of developments that are exempted per N.J.A.C. 5:97-8.3(e);
- A description of the amount and nature of the fees imposed per N.J.A.C. 5:97-8.3(c) and (d);
- A description of collection procedures per N.J.A.C. 5:97-8.3(f);
- A description of development fee appeals per N.J.A.C. 5:97-8.3(g); and
- A provision authorizing COAH to direct trust funds in case of non-compliance per N.J.A.C. 5:97-8.3(h).

WHEREAS, The Township of Montgomery has prepared a draft development fee ordinance that establishes standards for the collection, maintenance, and expenditure of development fees consistent with COAH's regulations at N.J.A.C. 5:97-8 and in accordance with P.L.2008, c.46, Sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

NOW THEREFORE BE IT RESOLVED That the Township Committee of the Township of Montgomery in Somerset County requests that COAH review and approve Montgomery Township's development fee ordinance.

16-1. Committeewoman Wilson moved the adoption of the foregoing resolution. The motion was seconded by Committeeman Joye and carried on the following:

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

ADJOURNMENT was at 9:35 p.m. on a motion by Committeewoman Wilson, seconded by Committeeman Caliguire and carried unanimously.

Date of Approval:

Donna Kukla, Township Clerk