

MONTAGUE TOWNSHIP COMMITTEE MEETING

January 12, 2010

MINUTES

Mayor Barbagallo called the session to order at 7:00 p.m. and indicated that adequate notice has been provided to the New Jersey Herald and The Sunday New Jersey Herald for publication in which notice was given of the date, time, place and general agenda of meetings in accordance with the Open Public Meetings Act, P. L. 1975, c. 231.

FLAG SALUTE: All present were asked to join in the Pledge of Allegiance.

ROLL CALL: Acting Clerk Picinich was asked to call the roll.

Present were: Deputy Mayor Brislin, Committeeman Ponce, Committeeman Teufert, Committeeman Zitone and Mayor Barbagallo. Also present were Attorney Garofalo and Acting Clerk Picinich.

Absent: None

PUBLIC PARTICIPATION REGARDING AGENDA ITEMS:

Callie Teufert, member of the Girl Scouts, asked that the agenda be amended to include a request for their community group to use the town hall. Mr. Teufert announced that members of the School Board would like to make a presentation. He then made a motion to include these two items in the agenda. Mr. Zitone seconded, and the motion carried with all in favor.

APPOINTMENTS

Mayor Barbagallo motioned to appoint John deJager to the positions of Construction Official and Sub Code Official. Mr. Brislin seconded, and the motion carried with a unanimous roll call vote.

Mr. deJager advised the committee of problems he felt exist within the construction department. He continued that with the current system in place, he would not have enough time to take over Housing. He suggested a new ordinance be adopted, similar to those in other municipalities, that instead of housing inspections every year, they be done only upon resale or change in tenancy. He suggested adoption of the International Property Maintenance Code. Mr. deJager indicated he could afford the town 10 hours per week. He also recommended a new fee schedule because we are outdated by at least 10 years, and recommended there be one similar to that used by the three other towns he works in. He submitted a copy of the fee schedule for the committee's review. Mayor Barbagallo commented that he thought the new system would save money over the long run, be a lot more efficient and not as costly to the taxpayers. Mr. deJager requested a computer for his office and upgraded software. Mr. Teufert recommended the request be reviewed during work on the budget.

Mr. Teufert motioned to appoint Scarinci & Hollenbeck as Township Special Counsel. Mr. Brislin seconded, and the motion carried with a majority roll call vote, with Mr. Zitone voting No.

Mr. Brislin motioned to appoint Nisivoccia & Co as Township Auditor with a modification to their December 23rd engagement letter that the budget related fee be reduced to \$1,750 from \$2,500. Mr. Teufert seconded, and the motion carried with a unanimous roll call vote. Mr. Brislin added that he had solicited the former auditing firm for a second proposal and was given a flat price of \$17,500, but that was for the audit of 2010, which would lock in a fee which would normally be voted on by the committee in 2011.

Mr. Brislin motioned to appoint Sharon Tufaro as Zoning Official. Mr. Teufert seconded, and the motion carried with a unanimous roll call vote.

Mr. Teufert motioned to appoint Sharon Tufaro as Code Enforcement Officer. Mr. Ponce seconded, and the motion carried with a unanimous roll call vote.

Mr. Teufert motioned to appoint Meg Snyder and Barbara Holstein as Co-Chairs. Mr. Zitone seconded. The motion carried with a unanimous roll call vote. Mayor Barbagallo suggested additional appointments to the committee of Dave Gibson and Glen Goodyear. Mr. Brislin suggested Mary Kopetsky. Mr. Teufert cautioned the additional appointments as members come and go from the committee, but suggested Jody Case-Kennedy, Deb Hotalen and Chris Wall. After advice from counsel, Mr. Brislin motioned to send letters advising them of their appointments to Recreation and requesting their acceptance. Mr. Zitone seconded, and the motion

carried with a unanimous roll call vote.

APPROVAL OF MINUTES

Mr. Teufert motioned to approve the January 1 Reorganization minutes, Executive Session minutes of December 22, and the Regular Session minutes of the same date with a correction in the reference to New Myrtle Drive in the wording “pre-written letter for review by the attorney” because his recollection was that the motion was for a request for a proposed settlement to go forward. He suggested approval of those minutes be tabled until the committee could listen to the recording. Mayor Barbagallo read the letter by former Clerk Francisco stating the letter was being sent on behalf of the majority of the committee to the attorney for review. A new motion was made by Mr. Teufert to approve the minutes not in question. Mr. Brislin seconded, and the motion carried with a unanimous roll call vote. Mr. Ponce motioned to table the December 22 Regular Session minutes. Mr. Brislin seconded, and the motion carried will all in favor.

DEPARTMENT OF PUBLIC WORKS

Dave Berhman updated the committee on work around town including drain cleaning and marking trees along the roads for removal. He added that the public is welcome to the wood.

RESOLUTIONS

R 2010-11 OUTSIDE LIEN REDEMPTION

Mr. Brislin motioned to approve the resolution. Mr. Zitone seconded, and the motion carried with a unanimous roll call vote.

R 2010-12 CANCELLATION OF TAX OVERPAYMENTS OR DELINQUENT AMOUNTS LESS THAN \$10.00

Mr. Brislin motioned to approve the resolution. Mr. Teufert seconded, and the motion carried with a unanimous roll call vote.

INTERLOCAL SERVICE AGREEMENTS

Mr. Brislin motioned to table the agreements, then withdrew his motion and motioned to approve the agreements between Frankford, Sandyston and Montague for Land Use Administrator and COAH Housing Officer. Mr. Zitone seconded, and the motion carried with a unanimous roll call vote.

UNFINISHED BUSINESS

7 Weider Road Property - Mayor Barbagallo announced that the township’s offer of approximately \$142,000 was accepted by the bank, and that he had spoken to bond counsel. He felt the property could be purchased for about \$20,000 down but the time frame may be problematic because an auction may be planned. Mr. Garofalo indicated that another option would be to prepare an ordinance and have a special meeting. Mr. Garofalo was authorized to speak with the bank’s counsel and report back to the committee.

New Myrtle Drive - Mayor Barbagallo read a letter from the township’s Special Counsel indicating that the letter written by former Clerk Francisco was undated and not copied to the committee, and that her correspondence advised the letter was to be reviewed. The attorney’s letter also stated the committee cannot accept the road without an Ordinance, and although he strongly does not recommend it, would prepare an Ordinance if it is the committee’s intention to accept the road without limitation.

Mr. Garofalo asked Mr. Teufert if he agreed that in spite of what the minutes might say, Scarinci & Hollenbeck acknowledged the settlement proposal and gave their legal counsel regarding it, that it makes the discussion regarding the minutes moot. Mr. Teufert replied in the negative saying that he believes the attorney was directed to say that it was the committee’s decision, not a request for an *opinion* that it was the committee’s decision. Mr. Teufert added that last year’s committee did vote, to put an end to the whole problem. Mayor Barbagallo replied that it was made worse, adding that the former Clerk interpreted the intention of the committee the same way it was interpreted in the minutes, because she sent that notification to the attorney. Mr. Teufert stated he is not sure the committee’s intentions were carried out. Mayor Barbagallo heatedly responded that he is not sure Mr. Teufert’s intentions are normal. After being rebuked by members of the public because there were children present, Mayor Barbagallo apologized for his outburst, but added that there is such a thing as the Rule of Law, the action taken at the late date of December 22 was improper, and that he has trouble with it.

Mr. Zitone asked why the problem was never resolved, which resulted in a lengthy discussion between he and Mayor Barbagallo. Mr. Zitone then asked why the township could not say that New Myrtle is a town road, and if there are any major improvements to that road then the property owners will be assessed for the improvements. Mayor Barbagallo stated that the town has the right to assess the people even if it is a town road. Mr. Teufert stated that if Mayor Barbagallo believes

New Myrtle is not a township road, then the township should not be plowing it by his definition. Mayor Barbagallo replied that it was always plowed as a favor up until December 22, 2009. A member of the public, Mr. Guimes, reminded the committee that the roads in the lake community are plowed, which brought up another discussion regarding the Kelly Act. Mr. Utter requested that if the public is being allowed to speak, then Public Session should be opened.

Economic Development Committee - Mr. Garofalo advised the committee that since a search of records did not produce an Ordinance Establishing an Economic Development Committee, he has drafted one. Mr. Brislin stated that he recalled being on that committee, and asked Mr. Garofalo if it could have been created by resolution. Mr. Garofalo responded that it needs to be done by ordinance. Mr. Brislin made a motion to approve the Ordinance upon first reading. Mr. Teufert seconded. The motion carried with a unanimous roll call vote.

REPORTS

Tax Collector - Month of December - \$ 158,766.00
 Total for Year 2009 - 8,255,598.00

APPROVAL OF VOUCHERS

Mr. Brislin motioned to approve for payment. Mr. Ponce seconded, and the motion carried with a unanimous roll call vote.

NEW BUSINESS

2010 Budget Meeting Dates - January 25th, February 8th, February 22nd and March 8th, all to convene at 4:00 p.m.

Board of Health Dates - April 13, June 8, September 14, December 14 at 4:00 p.m.

Township Holidays Observed - Posted on bulletin board

REQUEST TO USE MUNICIPAL BUILDING

A member of the Girl Scouts read a speech to the committee regarding all the Scouts' work being done in the community, and their unhappiness with the decision not to allow them to use the building, wanting to know what they had done wrong. Mayor Barbagallo responded that a decision had been made by the committee several months ago wherein no organization would be allowed the use of the building unless they are a government entity. He stated that at that time, he felt if there were a committeeman present to open up and close the building that it would be fine. He also apologized to the girls for his earlier remark. Mr. Garofalo explained to them that his advice to the committee was in part the reason for their decision. He added that as the township's lawyer, it was his job to inform the committee that once one organization is permitted to use the building, then it must be made available to any organization that requests its use. Mayor Barbagallo said the committee has something worked out and the Girl Scouts could continue to use the building. The girls were commended on their presentation and drew a huge round of applause from the public.

PRESENTATION BY MEMBERS OF THE SCHOOL BOARD

Tom Bolen, President, and Bob DeGroat, Vice President of the School Board, were attending to make the public aware of the school's Special Election on January 26th to vote on a referendum for partial repair and replacement of the gymnasium, cafeteria and media center roof areas. Mr. Bolen explained that the roof is in bad repair, and through a grant, the State has agreed to assume 40% of the project cost, or \$158,050.00, the remainder to be paid by the issuance of bonds and notes, which will end up costing the average homeowner \$23 per year for five years. The School Board is seeking the support of the committee. Mr. DeGroat added that if this referendum does not pass, the school will be in significant financial trouble. A lengthy question and answer period followed with Mr. Bolen, Mr. DeGroat and the public. The polls will be open from 2 p.m. until 9 p.m. Mayor Barbagallo thanked both for their presentation.

CORRESPONDENCE

Tax Collector's Request to Attend Meetings - Mr. Brislin motioned to approve the request. Mr. Zitone seconded, and the motion carried with a unanimous roll call vote.

Cablevision - Notice of tariff increase. To be posted on the bulletin board.

Mayor Barbagallo acknowledged a thank you letter from Blue Ridge Rescue Squad for tying in a generator for the First Aid Building

PUBLIC PARTICIPATION

Mr. Brislin motioned to open to the public. Mr. Teufert seconded, and the motion carried with all

in favor.

Barbara Utter - expressed her displeasure that the former certified Clerk was not reappointed and an uncertified Clerk was. Also, that she had heard ‘murmurings’ around town before January 1 that the former Clerk was not going to be reappointed, and that her position was advertised in the newspaper and on the New Jersey League of Municipalities website in early January. She asked for the committee or attorney to enlighten her on the process. Mayor Barbagallo explained that the Clerk was told beforehand out of courtesy. Mrs. Utter asked how the committee members knew what they were going to do if they didn’t have a meeting. Mr. Garofalo explained to Mrs. Utter that he advised the committee that if there were even the possibility Ms. Francisco would not be reappointed, that she be told beforehand rather than on January 1 to save embarrassment in public. He also advised of the statutory definition of an Acting Municipal Clerk, and explained that the law allows an Acting Municipal Clerk to hold the position for up to three years.

Tom Bolen - wanted to know why Ms. Francisco was dismissed. Mayor Barbagallo responded that it did have something to do with tenure, but did not want to elaborate because of any matter that may ensue. Mr. Garofalo explained how tenure works, and added that the law requires no reason for not reappointing. Mr. Bolen expressed his opinion that to get rid of someone who was doing a good job is an injustice to the town.

Jim Guimes - expressed his opinion that since there is no tenure in the private sector there should be none in the public sector.

Bob Benson - requested he and Terry Snyder be allowed in Executive Session to discuss a personal matter. Mr. Garofalo advised that if they were to go into Executive Session there would be no confidentiality, that he would prefer giving them Rice notices before entering Executive Session. Mr. Benson said he would waive his rights.

Louanne Cular - told the committee they could not discuss Terry Snyder and Bob Benson in Executive Session because they are employees of Frankford, which is the lead agency in the shared services agreement, and added that you cannot Rice notice anyone who isn’t a Montague employee. She wanted to know why the committee is taking a matter that was for many years discussed in Executive Session out into the public to create a fiasco. She advised Mr. Garofalo not to speak to the committee regarding New Myrtle Drive because there is an obvious conflict. She also mentioned that the residents of New Myrtle deserve an answer as to whether their road will be plowed, and Mayor Barbagallo agreed. He stated that in 2005 Ms. Cular, representing all the residents on the road, stood before the committee asking the town to take it over, and that all the residents were willing to pay for it. The committee went out and spent engineering fees to get it ready for bid. The bid came in too high, and the committee ‘dropped the ball.’ After referring to several other events, Ms. Cular advised the mayor that the engineering plans were done wrong. A very long discussion erupted involving ownership and plowing.

Mark Utter - stated that Mayor Barbagallo made innuendos that he was promoting the New Myrtle Drive law suit and denied it, stating there are other people in the room. He was also concerned that the minutes referring to New Myrtle Drive reflecting only “After a heated, at times discussion among the committee’, and then going into the motion, requires more than a one word sentence in the minutes of such an important legal matter as this. He also stated he had requested a copy of the disk through an OPRA request and received one that he could not hear, asking the Clerk if he was entitled to a disk. Mr. Garofalo informed him that if the tape cannot be heard because of its condition, there is nothing that can be done about it. Mr. Utter said he would take it a step further and everyone go listen to the garbled up tape. Mayor Barbagallo stated to Mr. Utter that he wanted something, there was a problem, and the Acting Clerk went and fixed it for him and gave it to him the same day. Mr. Utter replied, asking the Acting Clerk if he said there was a problem. The Acting Clerk stated that Mr. Utter was going to get back to her and let her know if he still had a problem with the disk, but did not, so it was assumed he had listened to it. Mr. Utter requested the committee to take a vote that the township accept the road. The mayor requested the homeowners on the road sign a letter to the committee saying they will pay for the road when it is brought up to standards at any time. Mr. Utter stated that wasn’t the wishes of the committee.

Bob Benson - again questioned whether he would be allowed in Executive Session. Mr. Garofalo replied that his advice to the committee is no. Mr. Brislin asked if the decision not to appoint the constables can be revisited. The mayor said yes and Mr. Garofalo agreed. Mr. Brislin then asked if it could first be discussed in Executive Session to get the reasons for their earlier votes. Mr. Garofalo answered yes, but without the employees’ presence.

Mr. Brislin made a motion to reappoint Bob Benson and Terry Snyder to the positions of Constables retroactive to January 1. Mr. Zitone seconded with discussion. There was discussion regarding salaries, cost of uniforms, attendance at elections, times in the past when they were

needed to keep the peace, and the need to attach duties and responsibilities to their job descriptions. Mr. Brislin amended his motion to appoint the individuals, and within thirty to sixty days come up with a job description and requirements. Mr. Zitone seconded, and the motion carried with a unanimous roll call vote.

Mr. Ponce motioned to enter Executive Session for the purpose of discussing personnel and litigation with the possibility of action being taken. Mr. Brislin seconded, and the motion carried with all in favor.

RESOLUTION

R 2010-15

WHEREAS the Township of Montague is authorized, pursuant to N.J.S.A. 10:4-12 to exclude the public from that portion of this meeting for purposes of discussing specific matters as permitted by N.J.S.A. 10:4-12; and

WHEREAS the Township intends to discuss certain matters which are deemed confidential pursuant to N.J.S.A. 10:4-12 in Executive Session; and

WHEREAS at this time the Township cannot determine the time when the discussions to be held in Executive Session will be made public, but will disclose the minutes of the Executive Session when the need for confidentiality no longer exists.

NOW THEREFORE, be it resolved by the Township Committee of the Township of Montague that this meeting shall be adjourned to an executive session (closed session) and the public will be excluded in order that the Committee may, in accordance with N.J.S.A. 10:4-13(a), discuss personnel and litigation, and after reconvening this public meeting the Mayor or his designee will announce, if possible, the time when and the circumstances under which the discussion conducted in Executive Session will be disclosed to the public. This resolution is authorized and allowed by and pursuant to N.J.S.A. 10:4-13.

NOW THEREFORE, be it further resolved by the Township Committee that pursuant to N.J.S.A. 10:4-13(b) the time when and the circumstances under which the discussion conducted in closed session of the public body can be disclosed to the public is when the need for confidentiality no longer exists.

DESRIE W. PICINICH, CMR
Acting Municipal Clerk

Mr. Teufert made a motion to close Executive Session. Mr. Teufert seconded, and the motion carried with all in favor.

Mr. Zitone motioned to return to Regular Session. Mr. Teufert seconded, and the motion carried with all in favor.

Mr. Zitone made a motion to accept New Myrtle Drive from Rt. 206 to Red Hill Road as a township road, in accordance with the conditions of 1953. If and when there are any improvements to the road, the property owners will be assessed for the improvements. Mr. Brislin seconded. Mayor Barbagallo added that the foregoing to be sent to the attorney. Roll call: All yes.

Mr. Brislin motioned to insure that for the remainder of this winter season, that New Myrtle Drive is adequately maintained by the DPW. Mr. Teufert seconded, with discussion. After further discussion regarding maintenance, the condition of the vehicles, and whether or not roads were plowed, the motion carried with a majority roll call vote, Mayor Barbagallo voting no.

Mr. Teufert motioned to adjourn. Mr. Zitone seconded, and the meeting adjourned at 10:36 p.m.

Respectfully Submitted,

DESRIE W. PICINICH, CMR
Acting Municipal Clerk

