

MINUTES FOR
MONTGOMERY TOWNSHIP COMMITTEE MEETING
June 2, 2011

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 Caliguire, Deputy Mayor Dyer, Committeemembers Carter, Graham and Trzaska

Also present were:

TOWNSHIP ATTORNEY - Kristina P. Hadinger, Esq.

TOWNSHIP ADMINISTRATOR - Donato Nieman

CHIEF FINANCIAL OFFICER - Walter Sheppard

TOWNSHIP CLERK - Donna Kukla

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

4. **PUBLIC COMMENT**

- 4-1. Bill Randolph, Boulder Brook Court, was appearing on behalf of the Montgomery Tea Party. It has been their intent to record the meetings and put them on their web-site. He requested that the Mayor would make an announcement in the Township Newsletter to that affect.

Mayor Caliguire stated that this had been mentioned before and one of the things the Township wants to look into the policy before promoting anything on the web-site. It would be further discussed at the next Township Committee meeting.

Committeewoman Graham suggested that the minutes of each meeting state that a representative of the Montgomery Tea Party was in attendance and videotaped the meeting.

Attorney Hadinger explained that tonight's minutes would reflect that Mr. Randolph appeared and requested that the Township include an announcement in the newsletter and suggested that Mr. Randolph provide the link to the Township Committee.

Mr. Randolph stated that the web address was www.themontgomeryteaparty.org.

- 4-2. Richard Schatzman, Esq., representing William King of Village Shopper III, LLC, stated that the Developer's Agreement provides for a Performance Bond. Since Mr. King is only rehabilitating the site by changing parking spaces around, making a small change to the detention basin, adding dumpsters, rehabilitating the landscaping, rehabilitating the façade of the shopping center and adding the addition which was approved in 1989-1990 and was delayed because of the lack of sewer, he's asking that the Township Committee consider waiving the Performance Bond.

Attorney Hadinger reported that on her way to the meeting tonight, she was speaking with Township Engineer Gail Smith about a number of issues including this. She received an engineer's estimate from Mr. King's engineer. There were several items in that estimate that did not need to be bonded so that the estimate was viewed as being higher than what was needed.

5. **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 #11-6-149 - REFUND OVERPAID 2010 and 2011 TAXES**

BE IT RESOLVED That refunds be given to the following for the overpayment of 2010 and 2011 taxes:

Block	Lot	Name	Year	Amount
5004	53	Yufang Shi & Liying Zhang	2011	\$4,265.77
8002	1	AAJ C Joseph & Julie George	2010	\$2,307.79
17001	6.30	Paul R. & Mary F. Nolan	2010	\$3,379.99
22029	18	Bruce L. & Linda Goldstein	2010	\$4,204.15
34023	34	Michael & Linda Huang	2010	\$ 111.05

(CONSENT AGENDA Cont.)

H. **RESOLUTION #11-6-156 - PURSUANT TO N.J.S.A. 40A:4-87** (Chapter 159, P.L. 1948) -
Clean Communities Program

WHEREAS, N.J.S.A. 40A:4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special items of revenue in the budget of any County or Municipality when such item shall have been made by law and the amount thereof was not determined at the time of the adoption of the budget; and

WHEREAS, Said Director may also approve the insertion of any item of appropriation for an equal amount.

NOW, THEREFORE, BE IT RESOLVED That the Township Committee of the Township of Montgomery hereby requests the director of the Division of Local Government Services to approve the insertion of items of revenue in the budget of the year 2011, in the amounts listed below, which items is now available as a revenue from the State of New Jersey;

Clean Communities Program	\$44,888.40
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BE IT FURTHER RESOLVED That a like sum, be, and the same, hereby is appropriated under the above appropriation titles; and

BE IT FURTHER RESOLVED That two copies of this document with handwritten ink signature of the Clerk on the certification and shall be forwarded to the Division of Local Government Services.

I. **RESOLUTION #11-6-157 - PURSUANT TO N.J.S.A. 40A:4-87** (Chapter 159, P.L. 1948) -
Garden State Green Acres Trust Grant - Drake Acquisition

WHEREAS, N.J.S.A. 40A:4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special items of revenue in the budget of any County or Municipality when such item shall have been made by law and the amount thereof was not determined at the time of the adoption of the budget; and

WHEREAS, Said Director may also approve the insertion of any item of appropriation for an equal amount.

NOW, THEREFORE, BE IT RESOLVED That the Township Committee of the Township of Montgomery hereby requests the director of the Division of Local Government Services to approve the insertion of items of revenue in the budget of the year 2011, in the amounts listed below, which item is now available as a revenue from the State of New Jersey;

Garden State Green Acres Trust Grant - Drake Acquisition	\$44,500.00
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BE IT FURTHER RESOLVED That a like sum, be, and the same, hereby is appropriated under the above appropriation titles; and

BE IT FURTHER RESOLVED That two copies of this document with handwritten ink signature of the Clerk on the certification and shall be forwarded to the Division of Local Government Services.

J. **RESOLUTION #11-6-158 - OPPOSING THE PASSAGE OF A-3285**

WHEREAS, A-3285 would require that certain public contract bid advertisements include certified cost estimates or estimate ranges of projected contract cost and it would amend the grounds for rejection of all bids; and

WHEREAS, Advocates for A-3285 argue that the best interests of taxpayers are served by the provisions of A-3285, because it promotes, they claim, openness and broad dissemination of information; and

WHEREAS, We agree that taxpayers are best served by openness and board dissemination of information, however, A-3285, would, in fact, limit a competitive process that is the foundation of the Local Public Contracts Law and would not best serve the public interest; and

WHEREAS, A-3285 would require a municipality to include in the public advertisement its cost estimates or cost estimate ranges for construction projects in excess of \$500,000; and

WHEREAS, A-3285 also amends the provision to reject all bids; and

WHEREAS, One of the amendments would permit a municipality to reject all bids only if the lowest bid substantially exceeds the municipality's cost estimates or cost estimate ranges for the goods or services as published and attested; and

WHEREAS, As a result of this amendment, all contracts, including goods and services, over the contracting unit's bid threshold will now require the public advertisement for bids to include cost estimates or cost estimates ranges; and

WHEREAS, Municipal engineers and other design professionals will typically prepare the projects cost estimates based on the current industry cost and bids received for similar projects in different municipalities; and

(CONSENT AGENDA Item J Cont.)

WHEREAS, These estimates tend to be in the middle of the current industry cost; and

WHEREAS, We are concerned that A-3285 will create the "floor" as opposed to a "ceiling" for bid pricing, removing the incentive for competitiveness and prohibit a municipality from receiving the best possible price for the project; and

WHEREAS, Requiring the advertisement of the cost will lead to unfair pricing and increased cost for already strained taxpayers; and

WHEREAS, A-3285 also has the potential to expose municipalities to protracted disputes and litigation; and

NOW, THEREFORE, BE IT RESOLVED, By the Township Committee of the Township of Montgomery that it strongly opposes the passage of A-3285 as it will delay construction projects, lead to increased costs, limit the rejection of bids and expose municipalities to protracted disputes and litigation; and

BE IT FURTHER RESOLVED, That copies of this Resolution be forwarded to New Jersey Governor Christopher Christie, to Senate President Stephen Sweeney, to Assembly Speaker Sheila Oliver, to our State Senator, to our two Representatives in the General Assembly, and to the New Jersey League of Municipalities.

K. **RESOLUTION #11-6-159 - REDUCTION OF PERFORMANCE GUARANTEE - Tusk Fusion Restaurant**

WHEREAS, Gail Smith, Township Engineer, has certified on May 25, 2011 that a performance guarantee posted for Tusk Fusion Restaurant may be reduced; and

WHEREAS, The remaining and partially completed improvements will be adequately covered by a reduced performance guarantee as specified in the Township Engineer's estimate dated May 26, 2011.

NOW, THEREFORE, BE IT RESOLVED By the Montgomery Township Committee that a reduced performance guarantee amounting to \$58,263.12 reduced from \$173,435.40 be posted as follows:

10% cash	\$ 5,826.31
90% cash, Letter of Credit, or Surety Bond	\$ 52,436.81

L. **RESOLUTION #11-6-160 - APPROVAL OF SECOND AMENDMENT TO CONSTRUCTION SEQUENCE AGREEMENT FOR VILLAGE SHOPPER III AND AUTHORIZING MAYOR AND CLERK TO EXECUTE SAME**

BE IT RESOLVED That the Mayor and Clerk are hereby authorized to execute a Second Amendment to Construction Sequence Agreement with Village Shopper III, LLC for Village Shopper III.

M. **RESOLUTION #11-6-161 - RESOLUTION RESCINDING CONTRACT AWARD TO JAMES MOLYNEAUX CO. IN CONNECTION WITH THE MONTGOMERY VETERANS MEMORIAL**

WHEREAS, By Resolution No. 11-4-113, adopted on April 7, 2011, the Township Committee awarded a contract to James Molyneaux Co. for \$17,800.00 for services in connection with the inspection, movement and erection of five (5) stellae and one (1) pentagram to become part of the Montgomery Veterans Memorial; and

WHEREAS, Subsequent to said award and prior to the parties' execution of a formal agreement, James Molyneaux Co. advised the Montgomery Veterans Memorial Committee that it was unable to complete the services for the price originally quoted and sought a significant price increase to provide the same services; and

WHEREAS, The Montgomery Veterans Memorial Committee has recommended that the Township Committee rescind the contract award made to James Molyneaux Co. as the requested price increase is neither justified, reasonable nor acceptable, and that the Township Committee award the contract for the sought-after services to another firm.

NOW, THEREFORE, BE IT RESOLVED By the Township Committee of the Township of Montgomery, County of Somerset, New Jersey, as follows:

1. The Township Committee's April 7, 2011 contract award to James Molyneaux Co. for services in connection with the Montgomery Veterans Memorial, made by Resolution No. 11-4-113, is hereby rescinded and no longer of any force and effect.
2. The Township Committee's grants of authority to the appropriate Township officials made by Resolution No. 11-4-113 in connection with the contract award made to James Molyneaux Co., including but not limited to the authority to execute an agreement with James Molyneaux Co. and pay for services thereunder, are also rescinded and no longer of any force and effect.
3. The Township Administrator, Township CFO and Township Attorney are hereby authorized and directed to execute whatever documents may be necessary, if any, to effectuate the Township Committee's rescission of the James Molyneaux Co. contract award as hereinabove described.

(CONSENT AGENDA Cont.)

N. **RESOLUTION #11-6-162 - RESOLUTION AWARDING AN EXTRAORDINARY UNSPECIFIABLE SERVICE AGREEMENT TO ELITE RESTORATION INC. IN CONNECTION WITH THE MONTGOMERY VETERANS MEMORIAL**

WHEREAS, The Township of Montgomery ("Township") is working with the Montgomery Veterans Memorial Committee in the construction of the Montgomery Veterans Memorial located in Montgomery Park in Montgomery Township, New Jersey; and

WHEREAS, The Township requires an experienced firm to undertake all necessary services to properly inspect, move and permanently erect the five (5) four-ton granite stellae and one (1) seven-ton granite pentagram that will become part of the Montgomery Veterans Memorial; and

WHEREAS, Elite Restoration Inc., of West Chester, PA ("Elite Restoration"), a firm with substantial experience with similar projects, has a submitted a proposal to provide the sought-after services to the Township; and

WHEREAS, The Township Administrator has determined and certified in writing that the value of the required services required will exceed \$17,500.00; and

WHEREAS, The Township has a need to acquire these services without a "fair and open process" as defined by P.L. 2004, c.19, the "Local Unit Pay-to-Play Law" and in connection therewith, Elite Restoration has completed and filed with the Township the required Campaign Contributions Affidavit pursuant to N.J.S.A. 19:44A-20.8, Certification Regarding Political Contributions pursuant to N.J.S.A. 19:44A-20.26 and Affidavit Prerequisite to Execution of Agreement Exempt from Public Bidding and in Excess of \$5,000.00 pursuant to Section 2-22.2 of the Code of the Township of Montgomery (1984) (collectively, the "Pay-to-Play Forms"); and

WHEREAS, The agreement shall be for an amount not to exceed \$20,000.00; and

WHEREAS, The Chief Financial Officer has certified that sufficient funds are available to pay for said services; and

WHEREAS, The Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., authorizes the Township to award this agreement as an extraordinary unspecifiable service agreement, without competitive bidding.

NOW, THEREFORE, BE IT RESOLVED By the Township Committee of the Township of Montgomery, County of Somerset, New Jersey, as follows:

1. The Mayor and Township Clerk are hereby authorized and directed to execute an agreement with Elite Restoration consistent with this Resolution. The terms of said agreement are subject to the approval of the Township Attorney.
2. The agreement is awarded without competitive bidding as an "Extraordinary Unspecifiable Service" in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-5(1)(a)(ii), for the reasons set forth in the Township Administrator's Certification of Extraordinary Unspecifiable Service, which reasons are incorporated herein as if fully restated.
3. Elite Restoration shall be paid a fee not to exceed \$20,000.00 to provide these services.
4. A copy of this Resolution, the Certification of Contract Value, the Township Administrator's Certification of Extraordinary Unspecifiable Service, the Pay-to-Play Forms and the agreement shall be placed on file in the Office of the Township Clerk.
5. A notice of this action shall be published in the official newspaper as required by law.

O. **RESOLUTION #11-6-163 - RESOLUTION AMENDING RESOLUTION RECOGNIZING AND ACCEPTING DONATED GOODS AND SERVICES IN CONNECTION WITH THE MONTGOMERY VETERANS MEMORIAL**

WHEREAS, By Resolution No. 11-4-115 adopted on April 7, 2011, the Township Committee accepted donated goods and services, as well as the granite stellae and pentagram purchased with funds donated to the Montgomery Veterans Memorial, to be located in Montgomery Park; and

WHEREAS, Resolution No. 11-4-115 provided that, with the assistance and oversight of the Montgomery Veterans Memorial Committee, the Township would be contracting with James Molyneaux Co. for the services necessary to inspect, move and permanently erect the granite stellae and pentagram; and

WHEREAS, Resolution No. 11-4-115 further recognized that several members of the Montgomery Veterans Memorial Committee would be providing construction oversight and project administration in connection with the James Molyneaux Co. agreement; and

WHEREAS, The Township Committee has since rescinded the contract award previously made to James Molyneaux Co. and therefore, James Molyneaux Co. will not be rendering any services in connection with the Montgomery Veterans Memorial; and

WHEREAS, The Township Committee has also since awarded a new contract to Elite Restoration, Inc. for services in connection with the inspection, movement and erection of the stellae and pentagram.

NOW, THEREFORE, BE IT RESOLVED By the Township Committee of the Township of Montgomery, County of Somerset, New Jersey, that any and all references made in Resolution No. 11-4-115 to services to be rendered by James Molyneaux Co. under an agreement with the Township, and donated services in connection therewith, shall be amended to provide reference to Elite Restoration, Inc. in their place.

(CONSENT AGENDA Cont.)

P. TOWNSHIP COMMITTEE APPOINTMENT - Joint Insurance Fund

BE IT RESOLVED That Susan Smith is hereby appointment Joint Insurance Fund Alternate, replacing Donato Nieman, 1 year appointment expiring December 31, 2011.

5-1. Deputy Mayor Dyer moved the adoption of the **CONSENT AGENDA**. The motion was seconded by Committeeman Carter and carried on the following:

ROLL CALL - Ayes - Trzaska, Graham, Carter, Dyer, Caliguire
Nays - None

6. ORDINANCE #11-1383 - Thompson and TSC 1 Land Donations - Introduction

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

AN ORDINANCE OF THE TOWNSHIP OF MONTGOMERY IN SOMERSET COUNTY, NEW JERSEY AUTHORIZING, PURSUANT TO N.J.S.A. 40A:12-5, THE ACQUISITION BY GIFT OF BLOCK 11001, LOT 38.01 AND BLOCK 12001, LOT 11 (SERVIS AND HOLLOW ROADS/THOMPSON) AND BLOCK 14001, LOT 11.02 (FAIRVIEW ROAD/TSC 1) LOCATED IN THE TOWNSHIP OF MONTGOMERY

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 June 16, 2011 at approximately 7:00 p.m. as the date and time when said ordinance will be further considered for final adoption.

6-1. Committeeman Trzaska moved the adoption of the foregoing resolution. The motion was seconded by Deputy Mayor Dyer and carried on the following:

ROLL CALL - Ayes - Trzaska, Graham, Carter, Dyer, Caliguire
Nays - None

7. ORDINANCE #11-1384 - Capital-Acquisition of Various Equipment by the Sewer Utility - Introduction

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

AN ORDINANCE AUTHORIZING AS A GENERAL IMPROVEMENT THE ACQUISITION OF CERTAIN EQUIPMENT BY THE TOWNSHIP OF MONTGOMERY SEWER UTILITY AND APPROPRIATING \$100,000.00 THEREFOR FROM THE "SEWER CAPITAL IMPROVEMENT FUND" OF SAID TOWNSHIP.

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 June 16, 2011 at approximately 7:00 p.m. as the date and time when said ordinance will be further considered for final adoption.

7-1. Committeewoman Graham moved the adoption of the foregoing resolution. The motion was seconded by Committeeman Trzaska and carried on the following:

ROLL CALL - Ayes - Trzaska, Graham, Carter, Dyer, Caliguire
Nays - None

8. ORDINANCE #11-1385 - Capital-Acquisition of Various Equipment and Improvements - Introduction

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

AN ORDINANCE AUTHORIZING AS A GENERAL IMPROVEMENT THE ACQUISITION OF CERTAIN EQUIPMENT BY THE TOWNSHIP OF MONTGOMERY AND APPROPRIATING \$47,200.00 THEREFOR FROM THE "CAPITAL IMPROVEMENT FUND" OF SAID TOWNSHIP.

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 June 16, 2011 at approximately 7:00 p.m. as the date and time when said ordinance will be further considered for final adoption.

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

ROLL CALL - Ayes - Trzaska, Graham, Carter, Dyer, Caliguire
Nays - None

9. ORDINANCE #11-1386 - Deer Management - Introduction

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

AN ORDINANCE OF THE TOWNSHIP OF MONTGOMERY IN SOMERSET COUNTY, NEW JERSEY CONCERNING THE DEER MANAGEMENT PROGRAM AND AMENDING CHAPTER IX OF THE CODE OF THE TOWNSHIP OF MONTGOMERY (1984).

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 June 16, 2011 at approximately 7:00 p.m. as the date and time when said ordinance will be further considered for final adoption.

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

ROLL CALL - Ayes - Trzaska, Graham, Carter, Dyer, Caliguire
Nays - None

10. ORDINANCE #11-1387 - BOND - Various Capital Improvements - Introduction

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

AN ORDINANCE OF THE TOWNSHIP OF MONTGOMERY, IN THE COUNTY OF SOMERSET, NEW JERSEY, PROVIDING FOR VARIOUS CAPITAL IMPROVEMENTS AND RELATED EXPENSES IN AND FOR THE TOWNSHIP OF MONTGOMERY AND APPROPRIATING \$951,485 THEREFOR AND PROVIDING FOR THE ISSUANCE OF \$903,911 IN BONDS OR NOTES OF THE TOWNSHIP OF MONTGOMERY TO FINANCE THE SAME.

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 June 16, 2011 at approximately 7:00 p.m. as the date and time when said ordinance will be further considered for final adoption.

10-1. Committeeman Trzaska moved the adoption of the foregoing resolution. The motion was seconded by Deputy Mayor Dyer and carried on the following:

ROLL CALL - Ayes - Trzaska, Graham, Carter, Dyer, Caliguire
Nays - None

11. ORDINANCE #11-1388 - BOND - Various Sewer Utility Improvements - Introduction

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

AN ORDINANCE OF THE TOWNSHIP OF MONTGOMERY, IN THE COUNTY OF SOMERSET, NEW JERSEY, PROVIDING FOR VARIOUS SEWER UTILITY IMPROVEMENTS AND OTHER RELATED EXPENSES IN AND FOR THE TOWNSHIP OF MONTGOMERY AND APPROPRIATING \$5,095,000 THEREFOR, AND PROVIDING FOR THE ISSUANCE OF \$5,095,000 IN BONDS OR NOTES OF THE TOWNSHIP OF MONTGOMERY TO FINANCE THE SAME.

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 June 16, 2011 at approximately 7:00 p.m. as the date and time when said ordinance will be further considered for final adoption.

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

ROLL CALL - Ayes - Trzaska, Graham, Carter, Dyer, Caliguire
Nays - None

12. APPROVAL OF MINUTES

May 19, 2011 - Regular Session

Minutes were approved as printed.

13. **PAYMENT OF BILLS**

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

WHEREAS, The Chief Finance 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.

13-1. Committeeman Trzaska moved the adoption of the foregoing resolution. The motion was seconded by Deputy Mayor Dyer and carried on the following:

ROLL CALL - Ayes - Trzaska, Graham, Carter, Dyer, Caliguire
Nays - None

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

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

1. The Township Committee will now convene in a closed session that will be limited only to consideration of items with respect to which the public may be excluded pursuant to Section 7B of the Open Public Meetings Act.
2. The general nature of the subjects to be discussed in this session is as follows:
 - Advice of counsel with respect to County Club Meadows litigation;
 - Advice of Counsel with respect to sale of Skillman Village to Somerset County, terms and conditions of proposed amendment to agreement.
3. It is unknown precisely when the matters discussed in this session will be disclosed to the public. No agreements shall be authorized except by action of the Township Committee. It is possible that at the conclusion of this closed session the Committee will reconvene in open session for the purpose of taking action.

14-1. Committeewoman Graham stepped down from the dais for the Country Club Meadows item.

14-2. Committeeman Carter moved the adoption of the foregoing resolution. The motion was seconded by Deputy Mayor Dyer and carried unanimously.

15. Meeting reconvened in Open Session.

16. **RESOLUTION #11-6-164 - AUTHORIZING ASSIGNMENT AGREEMENT TO EFFECT THE PURCHASE OF REAL PROPERTY BLOCK 26001, P/O LOT 1, MONTGOMERY TOWNSHIP, NJ ("SKILLMAN VILLAGE")**

WHEREAS, The Township of Montgomery ("Township") entered into an Agreement of Sale dated October 18, 2010 ("Agreement of Sale") with the County of Somerset ("County") providing for the sale by the Township to the County of certain property identified as Block 26001, p/o lot 1, more commonly known as "Skillman Village"; and

WHEREAS, The Agreement of Sale established a gross purchase price of \$64,438.00 per acre for the property that is to be conveyed to the County under the terms of the Agreement of Sale; and

WHEREAS, Skillman Village in its entirety comprises approximately 256 acres, and the approximate number of acres to be conveyed to the County under the terms of the Agreement of Sale is 248; and

WHEREAS, The Agreement of Sale was authorized by Ordinance No. 10-1373, entitled "An Ordinance Authorizing the Sale of Block 26001, Lot 1, Located Between County Route 601 & Burnt Hill Road, Commonly Known as "Skillman Village" by the Township of Montgomery to Somerset County" ("Ordinance"); and

WHEREAS, The Ordinance provides that the Agreement of Sale may be amended by resolution of the Township Committee; and

WHEREAS, The Ordinance also provides that the Township will pay for the cost of demolition of remaining buildings on Skillman Village and removal of landfill material related to the former power house on Skillman Village out of the gross proceeds from the sale of the property to the County; and

WHEREAS, The Agreement of Sale permits the County to conduct due diligence investigations and provides for an assignment by the Township of its "Guaranteed Fixed Price Environmental Liability Transfer Agreement ("ELTA") with Weston Solution, Inc. to perform environmental remediation and related restoration of a dam at Skillman Village to the County; and

WHEREAS, Due diligence investigations are proceeding and have not been concluded; and

WHEREAS, The Agreement of Sale does not provide for its assignment by either party; and

(Item #16 Cont.)

WHEREAS, County officials have confirmed that the Somerset County Improvement Authority ("SCIA") wishes to obtain an assignment of the Agreement of Sale and ELTA from the County and, in connection with said assignment, wishes to modify certain terms of the Agreement of Sale to provide for the following upon payment by the SCIA to the Township of \$3,000,000: (a) completion of the demolition by the Township of the remaining buildings on Skillman Village prior to closing, (b) completion of the removal by the Township of the landfill material related to the former power house on Skillman Village prior to closing, (c) an extension the period of time for due diligence activities, (d) the pursuit of certain approvals from and submission of certain materials to NJDEP relative to Skillman Village, and other terms; and

WHEREAS, It is in the interests of public health, safety and welfare to advance the timing demolition of the remaining buildings and removal of the landfill material, and the SCIA is willing to provide for the payment of \$3,000,000 to the Township in exchange for, among other things, the Township's consent to the requested assignment and to facilitate said work and oversight thereof, said payment to be credited against the ultimate purchase price for Skillman Village; and

WHEREAS, There being no change in the purchase price for Skillman Village, and the restrictions on the permitted uses for Skillman Village to remain the same, the Township is willing to consent to such an assignment.

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

1. The Township Committee consents to the assignment by the County to the SCIA of the County's rights and obligations under the Agreement of Sale in accordance with the terms and conditions of a certain document entitled "Assignment Agreement to Effect the Purchase of Real Property, Block 26001 p/o lot 1, Montgomery Township, NJ ("Skillman Village").
2. The Mayor and Clerk are authorized to sign said Assignment Agreement to Effect the Purchase of Real Property, Block 26001 p/o lot 1, Montgomery Township, NJ ("Skillman Village").
3. The Township Administrator, Township Attorney and the Township's environmental/risk attorney are hereby directed to modify paragraph 23 of the Agreement of Sale to allow the assignment of the Agreement of Sale by the County to the SCIA, and the Mayor and Clerk are authorized to sign such a modification of the Agreement of Sale.
4. The Township Administrator, Township Attorney and the Township's environmental/risk attorney are hereby directed to modify the Agreement of Sale to encompass the provisions of the aforesaid Assignment Agreement to Effect the Purchase of Real Property, Block 26001 p/o lot 1, Montgomery Township, NJ ("Skillman Village") authorized by this resolution, and the Mayor and Clerk are authorized to sign such a modification of the Agreement of Sale.

16-1. Committeeman Carter moved the adoption of the foregoing resolution. The motion was seconded by Deputy Mayor Dyer and carried on the following:

ROLL CALL - Ayes - Trzaska, Graham, Carter, Dyer, Caliguire
Nays - None

17. **RESOLUTION #11-6-165 - DEDICATION BY RIDER - SKILLMAN VILLAGE (NPDC) DEMOLITION PROJECT AND LANDFILL REMOVAL**

WHEREAS, N.J.S. 40A:4-39 provides for the anticipation and expenditure of certain items of dedicated revenue which are not subject to reasonably accurate estimates in advance; and

WHEREAS, N.J.S. 40A:4-39, also provides that such anticipation and expenditure of dedicated revenue, is subject to approval of the Director of the Division of Local Government Services; and

WHEREAS, Somerset County officials have confirmed that the Somerset County Improvement Authority ("SCIA") wishes to obtain an assignment of the Agreement of Sale and ELTA from the County and, in connection with said assignment, wishes modify certain terms of the Agreement of Sale to provide for (a) completion of the demolition by the Township of the remaining buildings on Skillman Village prior to closing, (b) completion of the removal by the Township of the landfill material related to the former power house on Skillman Village prior to closing, (c) an extension the period of time for due diligence activities, (d) the pursuit of certain approvals from and submission of certain materials to NJDEP relative to Skillman Village, and other terms; and

WHEREAS, It is the desire of the Township Committee of the Township of Montgomery to anticipate and expend consideration received from the Somerset County Improvement Authority (SCIA); and

WHEREAS, An Assignment Agreement to effect the purchase of real property Block 26001, P/O Lot 1 Montgomery Township, NJ ("Skillman Village") has been entered into the 2nd day of June 2011 which specifies the scope of work to be undertaken with the consideration received from the Somerset County Improvement Authority (SCIA); and

(Item #17 Cont.)

NOW, THEREFORE, BE IT RESOLVED, That such funds received by the municipality be placed in a specific trust fund and such trust fund shall be considered a "Dedication by Rider" to the budget of the local unit per N.J.S. 40A:4-39 for the sole purpose stated above.

BE IT FURTHER RESOLVED, That two (2) certified copies of this resolution be furnished to said Director of the Division of Local Government Services.

17-1. Committeeman Carter moved the adoption of the foregoing resolution. The motion was seconded by Committeeman Trzaska and carried on the following:

ROLL CALL - Ayes - Trzaska, Graham, Carter, Dyer, Caliguire
Nays - None

18. **RESOLUTION #11-6-166 - RESOLUTION AWARDING CONTRACT FOR SKILLMAN VILLAGE BUILDING DEMOLITION PROJECT**

WHEREAS, Pursuant to a duly advertised Notice to Bidders, in accordance with the New Jersey Local Public Contracts Law, six (6) bids were received on May 25, 2011 for completion of the Skillman Village Building Demolition Project ("Project") to take place at the property known as Skillman Village (the "Property") as follows:

1.	Tricon Enterprise, Inc.	\$1,818,850.00
2.	National Waste & Recycling	\$1,831,671.00
3.	Richard E. Pierson Construction	\$2,467,230.00
4.	SMAC Corp.	\$2,570,000.00
5.	Geppert Bros., Inc.	\$3,101,850.00
6.	Site Enterprises	\$3,591,523.00

WHEREAS, The Local Public Contracts Law, N.J.S.A. 40A:11-4, requires that the award of a contract for this Project be made to the lowest responsible and responsive bidder; and

WHEREAS, On June 1, 2011 the Township received a written objection to the award of the contract to apparent low bidder Tricon Enterprise, Inc. ("Tricon") from National Waste & Recycling ("National"), the second apparent low bidder; and

WHEREAS, The Township Committee has considered National's objection and reviewed Tricon's bid, and finds that Tricon is the lowest responsible and responsive bidder; and

WHEREAS, The Township Engineer recommends that the award of the contract be made to Tricon; and

WHEREAS, The Township Attorney finds Tricon's bid documents to be in order; and

WHEREAS, The Chief Financial Officer has certified that there are sufficient funds available for this Project; and

WHEREAS, Funds for this contract are included in the appropriations authorized in Account Number 12-194-56-880-.

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

1. The contract for the Skillman Village Building Demolition Project is hereby awarded to Tricon Enterprise, Inc. as the lowest responsible and responsive bidder.
2. The Mayor and Clerk are hereby authorized and directed to execute an agreement with Tricon Enterprise, Inc. for completion of the Skillman Village Building Demolition Project for the contract price of \$1,818,850.00.
3. A copy of this Resolution and the agreement shall be placed on file in the Office of the Township Clerk, and shall be available for public inspection.

18-1. Committeeman Carter moved the adoption of the foregoing resolution. The motion was seconded by Deputy Mayor Dyer and carried on the following:

ROLL CALL - Ayes - Trzaska, Graham, Carter, Dyer, Caliguire
Nays - None

19. **FIREWORKS**

Mayor Caliguire asked that an E-Blast be sent out for the sale of fireworks parking passes.

ADJOURNMENT was at 7:58 p.m. on a motion by Committeeman Carter. The motion was seconded by Committeeman Trzaska and carried unanimously.

Date of Approval:

Donna Kukla, Township Clerk