

MINUTES FOR
MONTGOMERY TOWNSHIP COMMITTEE MEETING
November 19, 2015

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 Madrid, Deputy Mayor Trzaska, Committeemembers Graham, Smith and Sugden

Also present were:

TOWNSHIP ATTORNEY - Kristina P. Hadinger, Esq.

ASSISTANT CHIEF FINANCIAL OFFICER - Michael Pitts

TOWNSHIP CLERK - Donna Kukla

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

4. **POLICE REPORT**

Police Director Palmer reported on the following activities of the Police Department for the month of October, 2015:

- 68 motor vehicle accidents;
- 15 arrests;
- 7 thefts;
- 4 burglaries;
- 5 domestic violence.

5. **PUBLIC COMMENT**

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

6. **CONSENT AGENDA** - All matters listed hereunder are considered to be routine in nature and will be enacted in one motion. Any Township Committeeperson may request that an item be removed for separate consideration.

- A. **RESOLUTION #15-11-286 - AUTHORIZING PURCHASE OF HEATING OIL AND DIESEL FUEL THROUGH THE NEW JERSEY STATE CONTRACT**

WHEREAS, Exemptions from competitive bidding are allowed for items/services purchased through New Jersey State Contract per N.J.S.A.40A:11-12; and

WHEREAS, The Township of Montgomery has determined the following State Contract identifier 1NJCP Contracts #A81399 for heating oil and #A82770 for diesel fuel has provided the Township with the most competitive price for these items/services; and

WHEREAS, The Chief Financial Officer has certified that there are sufficient funds available for this purchase in account #01-201-31-446-242 (heating oil) and account #01-201-31-460-245 (diesel fuel).

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Montgomery that the following purchase for heating oil and diesel fuel at a not to exceed amount of \$1,050 (heating oil) and \$12,000 (diesel fuel) be authorized through the utilization of the New Jersey State Contract to:

Allied Oil
25 Camplain Road
Manville, NJ 08835

- B. **RESOLUTION #15-11-287 - AUTHORIZING ADOPTION OF THE REVISED MONTGOMERY TOWNSHIP BLOODBORNE PATHOGENS STANDARD EXPOSURE CONTROL PLAN**

WHEREAS, The Township of Montgomery is committed to provide a safe and healthful work environment for the entire staff; and

WHEREAS, The Exposure Control Plan (ECP) is provided to eliminate or minimize occupational exposure to bloodborne pathogens in accordance with the PEOSH Bloodborne Pathogens Standard, Title 29 Code of Federal Regulations 1910.1030; and

WHEREAS, The ECP is a key document to assist our facility in implementing and ensuring compliance with the standard, thereby protecting our employees. The revised ECP includes:

- I. Employee exposure determination,
- II. The procedures for evaluating the circumstances surround an exposure incident, and
- III. The schedule and method for implementing the specific sections of the standard, including:
 - < Methods of compliance,
 - < Hepatitis B vaccination and post-exposure follow-up,
 - < Training and communication of hazards to employees,
 - < Recordkeeping

(CONSENT AGENDA Item B Cont.)

NOW, THEREFORE, BE IT RESOLVED That the Township Committee of the Township of Montgomery hereby approves the adoption of the revised Montgomery Township Bloodborne Pathogens Standard Exposure Control Plan.

6-1. Deputy Mayor Trzaska moved the adoption of the **CONSENT AGENDA**. The motion was seconded by Committeeman Smith and carried on the following:

ROLL CALL - Ayes - Sugden, Smith, Graham, Trzaska, Madrid
Nays - None

7. **RESOLUTION #15-11-288 - TRANSFER OF FUNDS**

WHEREAS, There is a need to transfer funds to areas where there are insufficient funds to meet the demands of the Township; and

WHEREAS, There are sufficient funds to be transferred to those accounts as stated to meet the needs of the Township.

NOW, THEREFORE, BE IT RESOLVED, By the Township Committee of the Township of Montgomery, County of Somerset, State of New Jersey, that in accordance with the provisions of N.J.S.A. 40A:4-58 and N.J.S.A. 40A:4-59 hereby authorizes the Chief Finance Officer to make the following transfers:

<u>FROM</u>	<u>TO</u>	<u>AMOUNT</u>
COMMUNITY SCHOOL (S&W)		\$20,000.00
SEWER UTILITY - SEWER B (O&E)		\$25,000.00
SEWER UTILITY - SEWER C (O&E)		\$25,000.00
	COMMUNITY SCHOOL (O&E)	\$20,000.00
	SEWER UTILITY - SEWER E (O&E)	\$50,000.00

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

ROLL CALL - Ayes - Sugden, Smith, Graham, Trzaska, Madrid
Nays - None

8. **RESOLUTION #15-11-289 - RESOLUTION RESCINDING TERMINATION OF AGREEMENT WITH APS CONTRACTING, INC. ("APS"), AUTHORIZING CHANGE ORDER NO. 4 (AMENDMENT TO THE ORIGINAL AGREEMENT WITH APS) AND AUTHORIZING RELEASE OF FINAL RETAINAGE AND PAYMENT TO BENDER ENTERPRISES**

WHEREAS, On or about January 12, 2010, the Township executed an agreement ("Agreement") for the Upgrade and Expansion of the Pike Brook Waste Water Treatment Plant Project ("Project") with APS Contracting, Inc. ("APS") for the Contract Amount of \$14,250,000.00, as amended by Change Order Nos. 1 through 3, for a final Contract Amount of \$14,447,050.12; and

WHEREAS, By Resolution #15-5-118 adopted on May 7, 2015, the Committee terminated the Agreement with APS based on APS's default under the Agreement, including but not limited APS's failure to: submit mandatory documentation prerequisite to Final Acceptance; correct defects in the work; and pay outstanding bills of subcontractors/vendors; and

WHEREAS, Since that time, the Township and APS have been attempting to resolve all outstanding issues and bring the Project to final completion; and

WHEREAS, The Township and APS have drafted a proposed agreement for purposes of resolving all outstanding issues between the parties and bringing the Project to final completion, a copy of which is on file in the office of the Township Clerk ("Amendment to the Agreement"), and which shall serve as Change Order No. 4; and

WHEREAS, To facilitate execution of the proposed Amendment to the Agreement between the parties, the Township Committee must rescind its May 7, 2015 termination of the Agreement, thereby allowing the parties to amend said Agreement by execution of the Amendment to the Agreement; and

WHEREAS, The Amendment to the Agreement provides for the resolution of outstanding issues between the parties, including but not limited to the resolution of the claim by Bender Enterprises ("Bender"), an electrical subcontractor on this Project; and

WHEREAS, In May 2015, Bender filed with the Township a Notice of Municipal Mechanics' Lien under N.J.S.A. 2A:44-133, claiming unpaid invoices by APS on this Project in the amount of \$192,483.40; and

WHEREAS, The Township has been withholding \$137,936.00 of the Contract Amount on this Project and therefore, Bender's lien attached to this \$137,936.00; and

WHEREAS, Bender has agreed to resolve its claim for unpaid invoices against APS in consideration for the Township's payment of the \$137,936.00 directly to Bender; and

WHEREAS, The \$137,936.00 are funds that would have been due to APS upon final completion and acceptance of the Project, and in consideration for resolving its issues with Bender, APS has agreed to authorize the payment of the \$137,936.00 directly to Bender; and

WHEREAS, Pursuant to N.J.S.A. 2A:44-142a., Bender has filed with the Chief Financial Officer a certificate discharging its May 2015 lien;

(Item #8 Cont.)

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

1. The foregoing "Whereas" clauses are hereby incorporated herein as if fully restated.
2. The Township Committee's May 7, 2015 termination of the Agreement between the Township of Montgomery and APS Contracting, Inc. for the Upgrade and Expansion of the Pike Brook Waste Water Treatment Plant Project is hereby rescinded.
3. The Amendment to the Agreement that is presented herewith and on file with the Clerk's Office is hereby approved. The Agreement resolves the outstanding issues between the parties and provides for bringing the Project to final completion and acceptance. Upon execution of the Amendment, it shall also serve as Charge Order No. 4 to the Agreement.
4. The Chief Financial Officer is hereby authorized and directed to release payment in the amount of \$137,936.00 to Bender Enterprises, which amount represents the final retainage and payment under the Agreement with APS Contracting, Inc. The release of this payment to Bender Enterprises shall be contingent upon the Township's receipt of APS Contracting, Inc.'s payment to the Township of \$11,238.79 for reimbursement for work under the Agreement, and the Township Attorney's Office confirmation that all necessary documentation has been properly filed by APS with the Township.
5. The Township Attorney, Township Engineer and Township Clerk and such other officers, officials and employees as may be appropriate, are herewith authorized and direct to undertake such action as may be necessary to effectuate the terms of the Amendment to the Agreement.

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

ROLL CALL - Ayes - Sugden, Smith, Graham, Trzaska, Madrid
Nays - None

9. **ORDINANCE #15-1504 - LDO-Private Garages - Introduction**

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

AN ORDINANCE AMENDING AND SUPPLEMENTING
CHAPTER XVI, "LAND DEVELOPMENT", OF THE CODE OF THE
TOWNSHIP OF MONTGOMERY (1984) COUNTY OF SOMERSET,
STATE OF NEW JERSEY AND SPECIFICALLY SECTION
16-4.10b. REGARDING PERMITTED ACCESSORY USES IN THE
"PPE" PUBLIC, PARKS AND EDUCATION DISTRICT

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 3, 2015 at approximately 7:00 p.m. as the date and time when said ordinance will be further considered for final adoption.

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

ROLL CALL - Ayes - Sugden, Smith, Graham, Trzaska, Madrid
Nays - None

10. **APPROVAL OF MINUTES**

The Regular Session minutes of November 5, 2015 were approved as printed.

11. **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.

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

ROLL CALL - Ayes - Sugden, Smith, Graham, Trzaska, Madrid
Nays - None

12. PROPERTY MANAGEMENT ORDINANCE

Committeeman Sugden stated that there had been a house fire on Bedens Brook Road and the remnants are still there. He asked if there was anything the Township could do to clean up the property. Administrator Nieman stated that there has been reluctance on the part of the Governing Body to adopt any kind of ordinance that addressed property maintenance. He explained that, in this instance, there was an on-going "fight" between the insurance company and the property owner. He said he will provide the Governing Body with samples of ordinances from other municipalities regarding this topic. He explained that those ordinances were put in place by those other municipalities because of the foreclosure crisis that allows for the municipality to take action and, at the same time, protect the taxpayers from having to foot the bill. The problem has always been that the Township ends up putting out the funds, and because the Township might place a lien on the property, the Township is so far down the list they often don't recover the funds they spend to clean up the property. Committeeman Sugden stated that there was a concern because there are young people who are going into the remains of the vacant structure.

Committeeman Smith suggested that the Township strengthen their ordinances so that there was some protection for the public.

Attorney Hadinger explained that very often there is a lot of push back from people concerned about property rights whenever any municipality discusses property maintenance and moves forward with such an ordinance or code.

13. VETERANS MEMORIAL PARADE

Mayor Madrid reported on the Veterans Memorial Committee's Veterans Day celebration. She stated that it was very well attended and she had the honor of speaking.

14. MARY JACOBS LIBRARY FUNDRAISING EVENT

Mayor Madrid reported on the Mary Jacobs Library's Food and Wine of France fundraising event. She stated that it was the best attended event the Library Foundation has had.

15. 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 affordable housing matters and pending litigation.
3. It is unknown precisely when the matters discussed in this session will be disclosed to the public. Matters concerning litigation may be announced upon the conclusion of any trial or settlement of the litigation. It is possible that at the conclusion of the closed session, the Township Committee will reconvene in open session for the purpose of taking action.

15-1. Committeewoman Graham moved the adoption of the foregoing resolution. The motion was seconded by Deputy Mayor Trzaska and carried unanimously.

17. Meeting reconvened in Open Session and ADJOURNMENT was at 7:35 p.m. on a motion by Deputy Mayor Trzaska. The motion was seconded by Committeeman Smith and carried unanimously.

Date of Approval:

Donna Kukla, Township Clerk