

MINUTES FOR
MONTGOMERY TOWNSHIP COMMITTEE MEETING
October 17, 2019

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: Deputy Mayor Gural, Committeemembers Trzaska and Quraishi
Mayor Jaffer and Committeeman Schuldiner were absent

Also present were:

TOWNSHIP ATTORNEY - Kevin Van Hise, Esq.

TOWNSHIP ADMINISTRATOR - Donato Nieman

CHIEF FINANCIAL OFFICER - Michael Pitts

DEPUTY TOWNSHIP CLERK - Margaret Crawford

2. Deputy Mayor Gural 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. Deputy Mayor Gural led the Salute to the Flag.

4. **DISCUSSION ON INTERPRETIVE HISTORICAL SIGNAGE AT SKILLMAN PARK**

Lori Savron, Township Planning Official, spoke about the proposed interpretative historical signage at Skillman Park. The Skillman Park property has a long history in Montgomery Township. Prior to the acquisition and remediation, one of the goals of the Township was to preserve the historic nature and history of the property either through the buildings or the landscape. Unfortunately, the buildings were not able to be preserved. The topic of interpretive signage had been discussed, which would help people discover the history of the property and significance of the people and places. This can cover a wide range of topics from history, cultural heritage, different stories about the property, and environmental information. This creates a narrative and generates interest and educates the users of the park. She has received a quote from Hunter Research who has extensive experience in interpretive signage and they are very familiar with the history of the property. Ms. Savron is suggesting an inclusive process which would be in keeping with how the Township has done other Skillman Village planning. She also suggested creating a subcommittee with members from different committees in town, such as the Landmarks Commission, Shade Tree Committee, Recreation Committee, etc. and also representatives from Somerset County. The project will take approximately 8 to 12 weeks to prepare the plan and then she and possibly the subcommittee will return to the Township Committee with a report.

- 4-1. **M19-10-1** - Committeeman Trzaska moved to move forward with this project. The motion was seconded by Committeeman Quraishi and carried unanimously.

5. **BEST PRACTICES DISCUSSION**

Chief Financial Officer Michael Pitts stated the following:

- The Best Practices Inventory encourages municipalities to embrace practices that promote financial accountability, sound management and transparency. Additionally, the Best Practices assesses each municipality's compliance with various laws and evaluates implementation of fiscal and operational best practices. The Best Practices answers provide taxpayers with an additional means of evaluating their municipality's performance, including how tax dollars are utilized.
- A total of 84 questions are distributed amongst three scoring categories: Core Competencies (38 questions), Best Practices (15 questions), and Unscored Survey (31 questions). The topics include budget, personnel, financial administration, capital projects, transparency, authorities, procurement, cybersecurity, shared services, affordable housing, environment and planning and economic development.
- Each municipality must receive a minimum score of 30 on the Inventory in order to receive its full Final Aid payment. Out of a possible 46 maximum points, Montgomery Township scored 41 points. This means no state aid will be deducted.

6. **PUBLIC COMMENT**

- 6-1. Liz Palius, River Road, spoke about the maintenance of cemeteries in the Township. She stated that Administrator Nieman had said that the budget is tight and she wondered if there was any thought given about trying to get volunteers to clean up these cemeteries. She also stated that if someone has some time to do some research, it may be that the Township has an easement to some of them. She knows that there is an easement to the Hoagland cemetery. Committeeman Trzaska suggested that some research be done on all of the cemeteries in town, large and small, so that there is a list. Administrator Nieman stated that some of the cemeteries are on private property and are family plots. He explained that the Township maintains cemeteries on municipal properties, but is not able to do this on privately owned properties. Ms. Palius spoke about the Hoagland cemetery. She stated that there was an easement on that property so there is access to it. At some point it had a fence surrounding it and had been maintained, but is no longer being maintained. It has a great number of graves. She suggested that scouts be approached about possibly cleaning up the cemeteries as a scout project. She also suggested that the Township Committee promote this project. Committeeman Trzaska stated that he was sure that there would be a few organizations that would help out.

(Item #6-1. Cont.)

Jessie Havens, Ludlow Avenue, stated that it was her understanding that the public is entitled to access all of the cemeteries, giving the property owners due regard. She didn't think the property owners were able to deny people or the Township access to these cemeteries. She stated that there was always a concern about how much it is going to cost. She stated that there are two (2) New Jersey State Statutes which address this topic: 40:10b and 40:10b2 - 40:10b3. One of these statutes specifically states that the municipality is wanted to maintain these cemeteries because they are significant and important. The other statute states that a municipality may spend up to \$3,000.00 to maintain them. Deputy Mayor Gural suggested that all of the cemeteries be put into an Excel spreadsheet.

6-2. Liz Palius, River Road, spoke about the Washington-Rochambeau route that is part of a 600 mile National Historic trail. She stated that it actually goes through Montgomery Township along Millstone-River Road. There was recently a national study done in which all 600 miles were evaluated. Millstone-River Road is one of six (6) roads that there is integrity, which means that the road is recognizable as it might have been when Washington and Rochambeau marched along it. River Road is the biggest and longest of all of the roads which have integrity. It is her opinion that River Road needs to be protected.

6-3. Brett Borowski, York Drive, spoke about the Skillman Village cemeteries. He stated that one was easy to find and the other is not as easy to find. He stated that there is a nice marker sign and the Rotary Club has information on this second cemetery.

Mr. Borowski spoke about the Green Acres land that is being farmed by the Stonebridge Development. He was at the meeting where the lease for the farming of this land was renewed and there was a lot of discussion. He is aware that the Township Committee cannot comment on the ongoing lawsuit. He has read up on the green acres restrictions and he understands that it allows for conservation for a number of different purposes. Interestingly enough, the plaintiff in this lawsuit is the one who told him that farming on Green Acres lands is done all over the state in agreement with the approval of Green Acres.

7. **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 #19-10-228 - RELEASE OF PERFORMANCE GUARANTEE** - Ken Scherer
Street Opening Permit #18-R-23 (Block 7007, Lot 27)

WHEREAS, Gail Smith, Township Engineer, has recommended the release of a cash performance guarantee to Ken Scherer because all work has been satisfactorily completed with respect to a street opening permit at Block 7007, Lot 27 (204 Monroe Avenue).

NOW, THEREFORE, BE IT RESOLVED By the Montgomery Township Committee that the cash performance guarantee in the amount of \$165.00 be released to Ken Scherer, Hillsborough Irrigation, 273 Willow Road, Hillsborough, NJ 08844.

B. **RESOLUTION #19-10-229 - RELEASE OF PERFORMANCE GUARANTEE** - Timmy Charles Fox
Street Opening Permit #18-R-34 (Block 7008, Lot 18)

WHEREAS, Gail Smith, Township Engineer, has recommended the release of a cash performance guarantee to Timmy Charles Fox because all work has been satisfactorily completed with respect to a street opening permit at Block 7008, Lot 18 (208 Berkley Avenue).

NOW, THEREFORE, BE IT RESOLVED By the Montgomery Township Committee that the cash performance guarantee in the amount of \$916.67 be released to Timmy Charles Fox, Fox Landscape Architects Inc., 7 Heather Lane, Belle Mead, NJ 08502.

C. **RESOLUTION #19-10-230 - RELEASE OF PERFORMANCE GUARANTEE** - Nassau Racquet and Tennis
Club Parking Lot Expansion

WHEREAS, Gail Smith, Township Engineer, has certified on October 11, 2019 that all public improvements in a project known as Nassau Racquet and Tennis Club Parking Lot Expansion have been completed in accordance with the approved plans and the Code of the Township of Montgomery and therefore recommends that the Performance Guarantee be released.

NOW, THEREFORE, BE IT RESOLVED By the Montgomery Township Committee that a performance guarantee in the amount of \$65,198.90 (Bond #B1161645 in the amount of \$58,679.00 and \$6,519.90 cash) be released to Nassau Racquet & Tennis Club, Inc. and a maintenance guarantee be posted as follows:

Original Construction Cost Estimate	\$65,198.90
15% Maintenance Guarantee	\$ 9,779.84

BE IT FURTHER RESOLVED That the effective date of acceptance of the improvements shall be the date the Township Attorney confirms in writing that the maintenance guarantee is in the proper amount and acceptable legal format.

(CONSENT AGENDA Item C Cont.)

BE IT FURTHER RESOLVED That the release of the Performance Guarantee shall also be conditioned upon the posting of adequate escrow funds.

There are no roads or detention basins to be accepted with this project.

- 7-1. Committeeman Trzaska moved the adoption of the **CONSENT AGENDA**. The motion was seconded by Committeeman Quraishi and carried on the following:

ROLL CALL - Ayes - Quraishi, Trzaska, Gural
Nays - None
Absent - Schuldiner, Jaffer

8. **RESOLUTION #19-10-231 - RESOLUTION CONFIRMING CERTAIN MUNICIPALLY OWNED PROPERTY DESIGNATED AS LOTS 5 AND 5.01 IN BLOCK 29001 ON THE MONTGOMERY TOWNSHIP TAX ASSESSMENT MAPS WERE NOT AND ARE NOT CURRENTLY NEEDED FOR PUBLIC USE**

WHEREAS, The Township of Montgomery ("Township") is the owner of certain real property located on Montgomery Road, designated as Lots 5 and 5.01 in Block 29001 as shown on the Tax Assessment Maps of the Township of Montgomery (Rev. October 2018); and

WHEREAS, Combined Lots 5 and 5.01 comprise approximately 18.22± acres, and is improved with an existing driveway, parking area and access to a public trail network on Lot 5.01, open space areas, woodlands, and approximately eight (8±) tillable acres on Lot 5; and

WHEREAS, The approximately eight (8±) tillable acres and appurtenant areas (for access) on Lots 5 and 5.01 (the "Property") have been used and farmed by a private farmer under a Farming Lease Agreement between the Township and farmer since 2014; and

WHEREAS, The Property is part of designated Green Acres Open Space under the New Jersey Department of Environmental Protection, Green Acres Program ("Green Acres"); and

WHEREAS, The Township received approval from Green Acres to enter into a farming lease agreement for the Property pursuant to and as required by N.J.A.C. 7:36-25.13(a); and

WHEREAS, By Resolution #13-11-270, adopted November 14, 2013, the Township determined that the Property, along with other municipally owned open space parcels, was not needed for a public use and authorized an open public auction to lease the tillable portions of the Property, and the tillable portions of the other open space lands, for agricultural purposes in accordance with the explicit authority provided by N.J.S.A. 40A:12-14 of the Local Lands and Building Law, N.J.S.A. 40A:12-1, *et seq.*; and

WHEREAS, Following an open public auction, by Resolution #14-1-28, adopted January 6, 2014, the Township awarded lease agreements for thirteen parcels of municipally owned lands, including the award of a Farming Lease Agreement for the Property to the highest responsive bidder, John Johnson, with said lease containing an initial term of five years, commencing on January 1, 2014 and terminating on December 31, 2018 (the "Lease Agreement"); and

WHEREAS, The Lease Agreement contained an option provision allowing the lease to be extended by one additional five (5) year term, to expire on December 31, 2023; and

WHEREAS, In 2018, before the expiration of the initial lease term, the farmer / lessee expressed his interest and desire to extend the Lease Agreement for an additional five year term in order to continue farming the Property under the existing terms and conditions of the Lease Agreement; and

WHEREAS, The Township received approval from Green Acres to renew and/or re-lease several municipally owned parcels within the Green Acres program, including extending the lease for the Property, subject to the existing terms and conditions set forth in the Lease Agreement pursuant to and as required by N.J.A.C. 7:36-25.13(a); and

WHEREAS, By Resolution #19-3-83, adopted March 7, 2019, the Township authorized an additional five year extension of the Lease Agreement for the Property as provided for in the agreement; and

WHEREAS, Following the Township's adoption of Resolution #19-3-83, an action was filed in the Superior Court of New Jersey, entitled Daniel Greenhouse vs. Township of Montgomery, Docket No. SOM-L-424-19, raising certain challenges to the Township's award of the Lease Agreement extension (the "Action"); and

WHEREAS, During the pendency of the Action, the parties have filed various motions and cross-motions with the court regarding certain issues in the case; and

WHEREAS, Most recently, by Order and Written Decision entered October 11, 2019 by the Honorable Thomas C. Miller, P.J.Cv., the court denied Plaintiff's Motion for Summary Judgment, granted the Township's Cross-Motion for Summary Judgment, and remanded the matter to the Township Committee for an explicit finding on the issue of whether the Township has found that the Property "is 'not needed for public use' as that term is described in N.J.S.A. 40A:12-14"; and

(Item #8 Cont.)

WHEREAS, Pursuant to the Court's remand, the Township hereby confirms that, as evidenced by the fact that the Township sought to lease the Property to a private individual or entity for agricultural purposes, sought and obtained the approval of Green Acres to lease the Property to a private individual or entity for such purposes, conducted an open public auction, and awarded a lease agreement for the Property to a private individual pursuant to the explicit authority provided by N.J.S.A. 40A:12-14 of the Local Lands and Buildings Law, which requires as a condition precedent a finding that the property is not then needed for a public use, that the Township had found and determined that the Property was not needed for a public use when it authorized the lease of the Property by adoption of Resolution #13-11-270, and when it awarded the Lease Agreement by Resolution #14-1-28; and

WHEREAS, The Township also confirms that at the expiration of the initial Lease Agreement in December, 2018, during the period of the Township's consideration of extending the Lease Agreement, and at the time of the adoption of Resolution #19-3-83 awarding the five-year extension of the Lease Agreement, the Township had no public use for or of the Property; and

WHEREAS, The Township further finds and confirms that the Property is not currently needed, nor is it needed in the foreseeable future, for a public use as "public use" is used in N.J.S.A. 40A:12-14 of the Local Lands and Buildings Law; and

WHEREAS, The Township affirms, whether previously stated explicitly or implicitly demonstrated by its actions, that the Property was not, is currently not, and for the foreseeable future is not needed for a public use prohibiting its lease to an individual or entity as provided for and authorized by N.J.S.A. 40A:12-14; and

WHEREAS, The Township reaffirms its prior finding and determination that it is in the best interest of the Township that the Property continue to remain open, accessible and farmed, and that the award of the Lease Agreement, as extended through December 21, 2023, is therefore appropriate and proper.

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

1. The foregoing "Whereas" clauses are incorporated herein as if fully restated.
 2. The Township finds, and explicitly confirms, that the subject Property, consisting of approximately eight (8±) tillable acres and appurtenant areas of Lots 5 and 5.01 in Block 29001 on the Montgomery Township Tax Assessment Maps, was not, currently is not, and is not foreseeably needed for a public use as "public use" is specified in N.J.S.A. 40A:12-14 of the Local Lands and Buildings Law.
 3. The Township reaffirms its award of the initial Lease Agreement for the Property, Resolution #14-1-28, and the five-year extension of the Lease Agreement, Resolution #19-3-83, pursuant to the authority provided by N.J.S.A. 40A:12-14, and explicitly confirms that at the time of each award, the Township had found and determined, whether explicitly stated or implicitly demonstrated by its actions, including but not limited to its 2013 decision to lease the Property, its 2019 decision to extend the lease for an additional five year term, and its reliance on N.J.S.A. 40A:12-14, that said Property was not then needed, nor foreseeably needed during the lease term, for a public use.
 4. The Township Attorney is hereby authorized and directed to provide a copy of this Resolution to the Court and Plaintiff as the Township's official findings pursuant to the Decision and Order for Remand, entered by the court on October 11, 2019 in the Greenhouse vs. Twp. of Montgomery matter, Docket No. SOM-L-424-19.
- 8-1. Attorney Van Hise explained that this is the subject of pending litigation. Earlier in 2019, the Township Committee awarded several farm leases. They had previously been leased several years ago. The leases had expired and the Governing Body had considered whether or not to renew these. Several of the farmers had wished to continue and the leases had provisions in them for those to be extended. A couple of the farmers had declined and those leases actually went out to bid and were awarded. On one of the properties, which is the one that is the subject of this resolution, a neighboring property owner challenged the Governing Body's action to award that lease extension. Through the course of the proceedings, there have been various motions that have gone back and forth on some of the issues on the case. An issue arose on the statute that actually permits the Governing Body to lease municipally owned land. The statute requires that there be a finding or at least a determination of the Governing Body that the land is not otherwise needed for public use. He brought up the fact that there was some chatter on social media about potential commercial uses on the property. He stated that this property is the subject of Green Acres restrictions and is the subject of the lease that was awarded by the Governing Body. That lease specifies that it may be only used for agricultural purposes.
- 8-1. Committeeman Trzaska moved the adoption of the foregoing resolution. The motion was seconded by Committeeman Quraishi and carried on the following:

ROLL CALL - Ayes - Quraishi, Trzaska, Gural
Nays - None
Absent - Schuldiner, Jaffer

9. **APPROVAL OF MINUTES**

The Regular Session minutes of October 3, 2019 were approved as printed.

10. **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.

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

ROLL CALL - Ayes - Quraishi, Trzaska, Gural
Nays - None
Absent - Schuldiner, Jaffer

11. **PLAYGROUND AT NEW MUNICIPAL COMPLEX**

Committeeman Trzaska stated that Deputy Mayor Gural and he started brainstorming with the Recreation Department for the playground at the new Municipal Complex. He explained that the vision for this playground is to be accessible and inclusionary.

12. **CHERRY BROOK PRESERVE**

Committeeman Trzaska spoke about the meeting he and the Mayor attended regarding the improvements to the Cherry Brook Preserve. He stated that the entry way and parking lot off Cherry Hill Road was cleared of a lot of the bamboo that was there. There is also new signage showing that it is a preserved open space. There was also discussion at the meeting about the wetland restoration project.

13. **4 WAY STOP SIGN AT ORCHARD ROAD AND OPOSSUM ROAD**

Deputy Mayor Gural stated she has personally seen a difference with the installation of the new 4 way stop sign at the intersection of Orchard Road and Opossum Road. People are being very respectful to one another when coming to this intersection now.

14. **COMMITTEE AND SUB-COMMITTEE REPORTS**

14-1. **ENVIRONMENTAL COMMISSION**

Administrator Nieman reported that the Environmental Commission will be presenting the updated Natural Resource Inventory and their recommendations to the Township Committee later in 2019.

14-2. **OPEN SPACE COMMITTEE**

Deputy Mayor Gural reported that the Open Space Committee is pulling mugwort, doing some plantings and trimming trees in the Township and trying to arrange and organize a planting day for the scouts.

14-3. **BOARD OF HEALTH**

Deputy Mayor Gural stated that the Board of Health has prepared their budget for 2020. They are dealing with the Raritan Valley Habitat for Humanity house being built.

14-4. **VETERANS MEMORIAL COMMITTEE**

Deputy Mayor Gural stated that the Veterans Memorial Committee is preparing for their Veterans' Day Ceremony. She explained that most of the programming for the day is locked in.

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 subject to be discussed in this session is as follows:
 - Potential acquisition of properties for open space, farmland, conservation, municipal purposes Block 31010 lots 10, 12 & 13 ("Hosea") and Block 15001 Lot 45 ("Raymond");
 - Confidential advice of counsel with regard to pending litigation - Greenhouse vs. Township of Montgomery;
 - Sale of property from PSE&G.

(Item #15 Cont.)

3. It is unknown precisely when the matter discussed in this session will be disclosed to the public. Approval of any agreements or acquisition of land shall be authorized by the Township Committee in a public session.
- 15-1. Committeeman Trzaska moved the adoption of the foregoing resolution. The motion was seconded by Committeeman Quraishi and carried unanimously.
16. Meeting reconvened in Open Session and ADJOURNMENT was at 8:23 p.m. on a motion by Committeeman Trzaska. The motion was seconded by Committeeman Quraishi and carried unanimously.

Date of Approval:

Margaret Crawford, Deputy Township Clerk