

TOWNSHIP OF DENVILLE
MUNICIPAL COUNCIL
REGULAR MEETING

FEBRUARY 15, 2011

The Meeting was called to order by President Kuser at 7:30 p.m. The Salute to the Flag was recited, followed by an Invocation given by Councilman Golinski. The Open Public Meetings Act Statement was read by Township Clerk Donna Costello. Mrs. Costello noted that Mrs. Smith has advised that she will not be in attendance this evening.

ROLL CALL: ANDES, FITZPATRICK, GOLINSKI, SHAW, STECKY, KUSER

ABSENT: SMITH

ALSO IN ATTENDANCE: ATTORNEY SEMRAU, ADMINISTRATOR WARD,
FACILITIES MANAGER CIARDI AND MAYOR HUSSA

LIAISON REPORTS:

Councilman Golinski said that, as he mentioned earlier, MAC member Marge Mournes passed away this week. He commented that she was a very dedicated volunteer and will be missed. Mr. Golinski noted that the MAC will hold a Coffeehouse event on March 18th at the American Legion hall.

Councilman Golinski stated that we have heard a lot about the Fire Department during the budget process and that the Department has certainly been busy. He said that he sent a reminder out to his e-mail list asking residents for their help in keeping the fire hydrants in their immediate areas cleared when it snows. Mr. Golinski noted that he has been asked if the Township is responsible for the hydrants and he would like some information regarding that question.

Administrator Ward replied that it is something that he will defer to our Attorney. He said that it may take some research of our ordinance.

Attorney Semrau added that he will research it and try to provide an answer this evening.

Mayor Hussa interjected that Mike Feravolo and another gentleman named John (the Mayor did not recall the man's last name) were out, as members of CERT clearing hydrants with the Fire Department.

Councilman Stecky reported that the Green Sustainable Committee is planning an Earth Day event. He noted that Earth Day is April 22nd, which is Good Friday, so they will probably be looking at a date in early May.

Mr. Stecky advised that the Beautification Committee had planned to tile additional planters, to be used around town, at Franz Fuertges's greenhouse but the greenhouse collapsed under the ice. He said that the project has been put off until the weather improves.

Councilman Shaw reported that he attended the funeral for Marge Mournes. He said that they had a great relationship and she was a member of the Senior Citizens Club. Mr. Shaw noted that she was involved in a lot of things, other than community projects. He added that her life centered around her grandchildren and her passing was a great loss to this community.

Councilman Fitzpatrick reported that N. J. Transit owns a piece of property along Township Council

Interstate 80. He said that they had planned to erect a very large billboard, originally to be 100 ft. tall and about 70 feet wide, along Route 80. Mr. Fitzpatrick noted that it was to be two-sided, with the potential to become an LED sign. He said that N. J. Transit is attempting to be a good neighbor by revising the plan twice. Mr. Fitzpatrick advised that the latest plan is a little bit smaller, perhaps 70 ft high and about the same width as originally proposed. He said that these properties do not fall under the jurisdiction of any of Denville's ordinances; he noted that State ordinances dictate what can be done on properties along the Interstate. Mr. Fitzpatrick advised that the Planning Board unanimously voiced their objections to the original sign, as well as both revisions. He reported that N. J. Transit is not coming for approval, they are just telling the Township that this is the plan. Mr. Fitzpatrick advised that they will come back to the Planning Board when the time comes to change the sign to an LED sign, just to let them know. He urged the Council to keep abreast of the situation and added that he very strongly feels that the public should be kept aware of the issue. Mr. Fitzpatrick stated that this proposed sign does not fit the character of Denville. He said that all of our legislators, the two Assemblymen and our Senator, have written letters to N. J. Transit voicing their objections. Mr. Fitzpatrick advised that they have also suggested that the Legislature enact laws to enable local jurisdictions to supercede, with local ordinances, the State statutes that would allow this.

Councilman Fitzpatrick then addressed the issue of the State not clearing snow from sidewalks on property that they own. He noted that all of the departments in town have done an amazing job during the snow storms to keep the walks clear and safe. Mr. Fitzpatrick added that volunteers have also helped people who are unable to deal with the snow removal themselves but the State has outright refused to tend to their property. The Councilman advised that he received a letter today from Burger King. He said that an area of their walkway belongs to the State but they received a letter from our Police Department reminding them to clear their sidewalk. Mr. Fitzpatrick reported that Burger King cleared all of the walkways, including that which is owned by the State, and their management sent a bill to the State for the snow removal and cited the local ordinance to back up their claim. He said that this was discussed at the last meeting and asked Attorney Semrau if anything further can be done.

Attorney Semrau replied that, since the Council will be going into Closed Session, he would like to discuss it further under Attorney/client privilege.

Councilman Andes, in agreement with Mr. Fitzpatrick, made a motion to pass a resolution telling the State of New Jersey that we are not very happy with their proposed billboard.

President Kuser said that he agrees.

Mr. Stecky said that he has a question on that, asking if the Council should listen to Mr. Semrau in Closed Session first.

Mr. Fitzpatrick commented that the motion would be on the billboard, not the snow removal issue. He added that he would certainly vote for such a resolution but understands that some of the Council members may need more information before deciding on it.

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Councilman Andes suggested that Mr. Semrau prepare a resolution for the next agenda and that will give the Council a chance to get up to speed on it.

President Kuser agreed with Mr. Andes and noted that he received information on it and assumes that the rest of the Council did as well.

Councilman Andes reported that the PRIDE Council is holding its annual dinner-dance on March 25th. He advised that the honorees will be Al Weidman, Bob Crothers and the Kiwanis Club.

President Kuser reported that the Board of Education is working on their budget and also discussed the DARE program. He also reported that he will be attending the Morris County League of Municipalities meeting tomorrow evening.

MAYOR'S REPORT:

Mayor Husa stated that he thinks it is very commendable of the Council to take that action regarding the billboard. He said that he believes it will take a group effort to defeat the proposal. The Mayor noted that he has sent a letter to the legislators as well but thinks that it will take the Council's resolution as well as phone calls and public involvement in order to succeed.

The Mayor advised that all the committee schedules, with the exception of the LEPC, are completed. He noted that the Deer Committee is meeting tomorrow and there are three (3) different deer management plans, which they will try to consolidate into a Denville plan. The Mayor asked for a moment of silence for Marge Mournes, stating that she was a dear, dear friend of the Township's.

The Mayor reported that he gave an address to the Chamber and their next meeting is tomorrow at 11:00 a.m. He said that he anticipates a very active year for the Economic Development Committee; he added that there are a lot of fired-up people on the Committee who will try to fill up some of these vacant stores.

Mayor Husa presented a list of appointments for Advice and Consent of Council for 2011. He read the appointments for the benefit of the public and noted that the Council has already received his letter listing them. A copy of the list is attached to these minutes.

MOTION TO GIVE ADVICE AND CONSENT TO MAYOR'S APPOINTMENTS: MOVED BY MEMBER STECKY, SECONDED BY MEMBER ANDES

AYES: STECKY, ANDES, GOLINSKI, SHAW, FITZPATRICK, KUSER

ABSENT: SMITH

ADMINISTRATOR'S REPORT:

Administrator Ward gave an update on the denial of the N J DOT for funds to re-surface Broadway and Palmer Road. He advised that the Township had requested \$193,000 through the grant program; statewide there were 370 municipalities that were awarded an average of \$212,000, so our request was well within the range of State awards. Mr. Ward further noted that, in Morris County, there were 25 municipalities awarded an average of \$180,000, slightly below our request. Mr. Ward advised that, currently, he is working with the Engineer and his assistant preparing a Local Infrastructure

Discretionary Aid application, which they hope to have submitted in the next couple of weeks for consideration for Palmer Road and Broadway. Mr. Ward commented that they have revised the estimate slightly and are requesting \$180,000 and, much like the campaign that the Mayor had mentioned for the N. J. Transit sign, we are likely to need that kind of community effort for this as well. He said that he is working on a mailing list which includes the addresses of the Governor, our local officials and Senators and Assemblymen and a letter to be sent to them asking for their support. Mr. Ward stated that he is hoping that it will be a grassroots effort and that it will go a long way towards getting the Discretionary Aid funds from the State.

President Kuser suggested putting the information on the web-site. Mr. Ward agreed and said that it will also be in various offices in the Municipal Building.

OPEN PUBLIC PORTION.

Gerry Idec, 1 East Longview Trail, noted that, other than those given to police officers, there are 24 cell phones that the town provides to municipal employees. He spoke about what he considers to be the typical plan for cell phone use, stating that there is a base charge for a certain number of minutes and additional charges for any minutes over that. Mr. Idec noted that, in the Tax Dept., there was an additional charge of \$23.74 and, in Finance an additional charge for extra minutes was \$94.89. He asked how he can know, as a Denville taxpayer, that these phones are being used only for Township business. He said that it is not fair for Denville taxpayers to have to pay for personal use of cell phones by Township employees.

Mr. Idec then stated that, to the best of his knowledge, if a police officer who is on call, calls into the station, the call is recorded. Mr. Kuser noted that the cell phone itself would have a record. Mr. Idec replied that he is talking about a two-way radio. He said that if there is an emergency and an officer calls into the station on the radio and the superior officer tells him to call back on the cell phone, that call is illegal because they should be recorded. Mr. Kuser called on Councilman Shaw and asked him if it is not correct that, when Mr. Shaw was Chief, officers sometimes called in on a pay phone. Mr. Shaw said that is correct and added that, as far as he knows, if an officer calls the main number it is recorded even if the call is made with a cell phone. Mr. Ward said that is correct.

Mr. Idec stated that his position is that all calls from inside the Police Station should also be recorded.

Attorney Semrau replied that there are certain protocols and procedure and he happens to know that any officer that is calling in information or is at a scene will follow the protocol and it would be recorded. He said that we are making an assumption that, all of a sudden, officers are not going to follow that protocol. Mr. Semrau stated that he doesn't think that is a question for anyone here. He said that the Denville's Chief of Police oversees public safety and how the police operate. Mr. Semrau added that he does not think it is in anyone's purview here to, number one, say that anyone is making phone calls like that and number two, that it would be appropriate to say, "you can't have a cell phone", because these are things that are beyond the discretion of the

Governing Body.

Mr. Semrau commented that he does not think that we should assume that police officers are violating any type of protocol. He said that we are talking in theory because we have no examples of where that has happened.

Mr. Idec replied that he has a police scanner and has heard an officer being told to call back on his cell phone.

President Kuser asked Administrator Ward what information he provided to Mr. Idec today. Mr. Ward responded that Mr. Idec has a copy of a recent monthly cell phone bill. Mr. Idec then asked why the employees should be able to use free minutes that the town is paying for. Mr. Ward advised Mr. Idec that any employee that exceeds the monthly allowance must reimburse the town for those charges.

Mr. Idec asked what assurance the Township has that the employees are not using the free minutes for personal calls. Mr. Ward explained that some phones are passed from employee to employee as the on-call situation requires. Mr. Idec said, "but you don't have anything in place to prevent them from using the free minutes for their own use". Mr. Ward reiterated that, if they exceed the monthly allowance, they have to reimburse the municipality. Mr. Idec repeated his question. Councilman Shaw interjected that, if it's Verizon, it will show up on the bill. Mr. Idec then asked if the numbers on the bill can be checked to be sure they are business calls.

President Kuser commented that some people don't even want a cell phone because they feel that they have to use their own electricity to charge the phone and the free minutes are not that important. He said that a cell phone is not an extravagant perk. He noted that it is a matter of communication and they have it on them all of the time; he said that he has heard Mr. Ciardi's cell phone ring at 7:30 p.m. because a computer went down. Mr. Kuser commented that he thinks these people have great dedication to be willing to be available to the Township at all hours and it costs the town nothing. Mr. Idec stated that the cell phone should be public information and, if he wanted to contact someone, he could just call their cell instead of town hall. He asked why someone in the Tax Dept. or the Finance Dept. would need a cell phone. Mr. Kuser explained that the employees who have to leave the building to do inspections, such as the Tax Assessor, need to be in contact with Town Hall and we want to know where everyone is. Administrator Ward added that, this evening after business hours, he had to contact the Finance Officer to discuss a matter of Township business.

Mr. Idec again referred to the police using a cell phone and not having the call recorded; he said that he is gathering that, in the opinion of the Township Attorney, this is alright. Attorney Semrau replied that he has not been informed that's happening and the Police Chief oversees the day to day operation of the Police Department in accordance with the statutes. He said that, if there is a problem, the Chief would be the one to handle it from a disciplinary standpoint.

Mr. Idec posed the question as to whether or not it is allowed to use a cell phone, that is not being recorded, for Police business. Mr. Semrau replied that he will get an answer for Mr. Idec.

Ed Banagan, 38 Old Mill Road, asked if R-11-59 concerns a garbage bid. He wanted to

know if that refers to residential garbage. Mr. Banagan was told that is correct.

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Mr. Banagan asked if the Council had seen the newspaper article concerning health benefits contributions. Mr. Kuser replied that he has seen the brief summary of how it will break down. Mr. Banagan noted that it will set the amount that employees will have to pay, starting at 2% all the way up to 12%, over a seven year period. He said that, after that, some are predicting 30%.

Mr. Banagan said that what he wants to talk about is Zeek Field, which was discussed at Saturday's meeting. He noted that he was surprised when that was discussed, considering that, somewhere between September and November, there was an architect here about the fields. Mr. Banagan said that there was a resident at that meeting who was concerned about well water; the resident asked the architect about the flow of the water with natural grass as opposed to turf. Mr. Banagan commented that the reply was that the water will flow into the woods. He said that the resident asked what happens when it goes into the woods, would it contaminate the wells. Mr. Banagan noted that the reply from the architect was that he doesn't know because he didn't test it. He said that the discussion then centered on homes being built on the Parsippany side of that area and the possibility of a lawsuit if the water flow is not properly tested. Mr. Banagan noted that his perception of the way the discussion was moving last Saturday was towards getting something approved; he said, however, that the Council interjected that it was not an item for discussion at a budget meeting and it would be addressed at a later time. Mr. Banagan asked if anyone has responded to Administration to give an explanation about the flow of this water; where it is going and what effect it will have on the neighbors. He said that he doesn't know who is working on the report so that the Council can make a decision.

President Kuser replied that he remembers the meeting and the Council asked Administration to come up with a consensus and then-President Andes felt that it was too soon because there was no recommendation from Administration.

Mr. Kuser stated that on Saturday it was news to him too, that the Mayor recommended one option, initialed it and said that was his recommendation, "do whatever you want". He said that's where it left off, so it is a bit premature now to even go forward with this. Mr. Kuser advised that we are going to get all our ducks in a row, it is not being built tomorrow and it's not being funded. He stated that he applauds the Mayor for wanting the deal but it has to be done the right way and everyone over there has to be contacted first.

Mr. Banagan asked what happened to the facts; he said that the public was told at that meeting that a report would be coming to the Administration for review, and to the Council, about lawsuits concerning water, fertilizer and lights. He said that he heard the Council promise the residents that lights would not be installed. Mr. Banagan noted that Mr. Kuser is agreeing with him but is not saying where the reports are.

President Kuser replied that the Administration was asked to respond to the questions that were asked that night and that was the last he has heard about it.

Mayor Husa stated that he requested a copy of the original public hearing today, but has not yet received it and, Mr. Ward has a call in to John Ruschke to get answers to

some of the questions. Mr. Banagan asked, if this project comes to fruition, will other towns be able to use the fields, or just Denville. President Kuser replied that the project is funded by Open Space and that means that other towns can use the fields but Denville has the first choice.

Mr. Banagan then brought up the issue of maintenance of the fields. He said that, at first, it was stated that maintenance would be required every seven years on turf fields and then the person back-pedaled and said that it could be five years and an outside firm would have to be hired. Mr. Banagan noted that he could be wrong but thinks the cost that was quoted was about \$95,000. He commented that the Council asked for a comparison between turf and natural grass and having the maintenance done in-house. Mr. Banagan stated that he just thinks that there were a lot of numbers that came up at that meeting that Mr. Ward, or someone, has to supply to the Council before the project proceeds. President Kuser replied that he agrees that it was premature to discuss this issue at that meeting.

Mr. Banagan then asked Mr. Andes a question regarding the Police budget presentation. He inquired as to whether Chief Wagner, in response to a question about using more civilians in Police Headquarters, stated that a police officer must sign off on matters such as the testing of radar used in gauging the speed of vehicles.

Mr. Andes replied that his recollection is that some of the training had to be signed off by an officer of a higher rank. He said that he also recalls the Chief saying that the speedometer and radar had to be calibrated. Councilman Shaw added that, before using a car, the officer must run the car through the radar to be sure that the speedometer and radar agree. There was a brief discussion regarding whether or not a Lt. has to do the calibrating or if it can be done by a private company, without the Lt. being present.

Mr. Banagan went on to question the scheduling issue. He stated that, if a Lt. can learn to do the scheduling, certainly a civilian could learn and the Chief would have to approve it regardless of who did it. Mr. Banagan commented that he did not get the feeling that the Chief is overly excited about sharing Police services.

Councilman Shaw replied that it is good for small towns and they should combine. He said that they don't have the training that Denville does because Denville sends their people out for training. Mr. Banagan asked if there is any chance that Denville could offer shared services to a smaller town and bring some revenue into Denville.

Mr. Kuser replied that he knows that Mr. Ward is constantly working on shared services and is constantly working with Chief Wagner to make it a better Department. He said that Mr. Ward is a great Administrator, has been here about eight months and has gotten up to speed very quickly. Mr. Kuser advised that, although it can't always be discussed in public, he knows that there are many things that Mr. Ward is working on. Mr. Banagan commented that sometimes people resist change and that's why he raised the issue.

Councilman Stecky noted that, when discussing the possibility of sharing police services with Mt. Lakes, the Chief advised that it wouldn't work due to the higher pay scale in Denville.

Fred Lash, 14 Mirador Ct., noted that he spent about an hour this morning with the Mayor and, for a portion of that time the Administrator, discussing the Mayor's plan to use an engineering consulting firm for the engineering needs of the Township, instead of having an in-house engineer. He said that he would like to discuss that and make his opposition clear. Mr. Lash noted that the Mayor brought up the following points to support this move: it will be economically advantageous and save money, engineering business and building is down and the Mayor feels that having the continuity of a long-term employee who can explain how the Township got from Point A to Point B is not critical. Mr. Lash advised that the Mayor feels a consulting company can bring him up to speed on all issues. He said that the last point he wishes to discuss is the treatment of a long-term employee.

Mr. Lash stated that he was shocked when he first heard of this proposal.

Attorney Semrau interrupted to advise that he understands that Mr. Lash is speaking as a member of the public and certainly has a right to do so. He added that, what Mr. Lash is talking about, he would ask we qualify it because it seems that it may be extremely personal. Mr. Semrau noted that, while Mr. Lash may have the right to discuss certain things, this Governing Body is not going to be able to respond because, in the case of Engineering, that individual would have to be notified that there would be discussion regarding his or her position, performance or potential promotion or reduction from the staff. He added that he is concerned that the discussion that Mr. Lash had with the Mayor was not a concept but was very personal to an employee.

Mr. Lash replied that he and the Mayor both made it very clear that the discussion was conceptual and did not involve any individual. He added that it is not personal from his perspective.

Mr. Semrau responded that he meant personal to the employee. He said that, for example, if we are discussing Engineering. Mr. Semrau commented that Mr. Lash certainly can speak but Mr. Semrau wondered if the Administration feels comfortable. He added that he would like to hear from them about whether they feel comfortable having Mr. Lash speak about an individual or a department. Mr. Semrau noted that the discussion has not yet come to the Governing Body.

Mr. Ward interjected that he and Mayor fully intended to notify the employee so that, when the discussion concerning the changing of the source of engineering locally, that employee would be able to be here. Mr. Ward stated that he does not feel comfortable discussing this in a public forum, without the employee having been notified appropriately.

Mr. Lash stated that he is here to put his objection, as a citizen, on the record. He said that he does not think that it suggests that he is soliciting a response from Administration or the Council. Mr. Lash commented that he feels that it is a significant issue that is not unlike shared services. He said that any time the Council brings up shared services they are talking about employees.

Attorney Semrau interjected that he does not want to interfere with Mr. Lash, however, Mr. Lash had a conversation with the Mayor and the Administrator and Mr. Semrau does not want that to be reflected in any way to an employee who is not here. Attorney

Semrau repeated that he respects Mr. Lash's right to speak but, having received certain information during his meeting with the Mayor and Administrator, he is concerned that what Mr. Lash has to say may effect the employment rights of an individual who is not present. Mr. Ward added that it may be more appropriate at a meeting in the future, where this issue may be discussed. He offered to provide Mr. Lash with notification of such meeting so that he may attend that meeting as well. Mr. Ward added that again, no one wants to infringe upon his right to speak, but it may be more appropriate at a later time.

The Mayor noted that he is not going to comment, but he hopes that Mr. Lash got an accurate portrayal of what they discussed today.

Mr. Lash replied that his intention was not to recite what the Mayor and Administrator may or may not have said to him and, given the Attorney's comments, he will not attempt to paraphrase any of the discussion that was held. He said that it was a conceptual discussion and that the Mayor has had numerous thoughts throughout the years about ways to save money, and this is one of them. Mr. Lash advised that he came here tonight to express his objection to that sort of concept. He said that he thought, as a financial guy, when he was on the Council that he is financially and fiscally sensitive. Mr. Lash added that he is a taxpayer and is retired but he feels that there are some false economies here and that's what has brought him out tonight.

Mr. Lash stated that he doesn't want to complicate things, either for an employee or the town, so he will talk about this in a conceptual sense. He noted that any type of consultant is generally paid on an hourly basis which is substantially more than an in-house employee. Mr. Lash commented that there will obviously be a contract to limit the consultant from going beyond the hours contemplated. He said that, in his opinion, the Township will not get a consultant to do the job equal to, or less than, the job of an existing employee. Mr. Lash stated that, in deference to Attorney Semrau's comments, he will skip some of his own remarks. He said that he was going to close with the question, "What can the Council do about it?". Mr. Lash answered his own question by stating that the Council approves the contracts that the community enters into. He said that is their control over how we deal with consultants of any type. Mr. Lash commented that he does not envy the Mayor or Administrator in trying to put a responsible budget together because he is a believer that the municipal services that they provide are the ones that we deal with every day. He added that it is important that we continue to provide these services and the Council is the ultimate arbiter of the budget and of contracts. Mr. Lash noted that, that is their control over something such as this. He said that, if there is a public discussion on the specific subject of the Engineering Department, he would like to be invited.

President Kuser asked Mr. Ward to reach out to Mr. Lash, should such a discussion be scheduled.

Robert Belz, 7 Memory Lane, asked if the \$190,000 DOT grant was denied due to a clerical error. Mr. Ward replied that it was not. He said that the requests, statewide, exceeded the amount of money that was available to be distributed among the municipalities. He noted that we have applied for a Discretionary Aid grant and he

explained that the funds in that grant program come from monies that were not used by municipalities that received a DOT grant. As an example he noted that, if a municipality applies for a grant of \$200,000 for road paving and only uses \$180,000, that extra \$20,000 goes into the Discretionary Aid Program.

Mr. Belz stated that he knows that employee negotiations are private but he thinks the public has a right to know where we are with them. He asked if we are negotiating, in a law suit or in arbitration.

President Kuser asked Mr. Ward to answer that question. Mr. Ward deferred to Attorney Semrau.

Attorney Semrau noted that it is a very good question but the response has to be extremely limited because we are not able to get into any details. He said that right now, with respect to the PBA, there is an ongoing matter that is presently pending regarding the contractual vote that took place last May when the contract was defeated by the Council. Mr. Semrau added that there are on-going discussions concerning negotiations. He said that is the best he can do as far as information goes.

Mr. Belz asked if there is a lawsuit. Mr. Semrau replied that there is a matter in dispute and there is litigation going on.

Mr. Belz commented that a newspaper article noted that Denville had 15 cars being used by employees and it was brought up at one of the meetings. He said that it was indicated that it was a residue from a previous administration. Mr. Belz pointed out that Denville has approximately 16,000 people and has 15 cars while Parsippany has 66,000 and only 19 cars. He noted that, in the budget, car expenses are listed for various employees who use town cars; he asked how these expenses are calculated.

Administrator Ward explained that the figures are estimates based on the limited use of most of the vehicles. He said that most are used so seldom that there is little likelihood of a breakdown. Mr. Ward advised that, since that article was published, corrective steps have been taken to reduce or reassign cars and the number of cars is currently down to twelve. He noted that the other vehicles assigned to employees are a contractual matter.

Mr. Belz stated that he has read in the newspapers that every town that has gone to the County dispatching system has saved between \$300,000 and \$500,000 a year. He commented that Denville could probably save \$500,000 in salaries and benefits and, at the same time, free up some room in the Police Department. Mr. Belz advised that he spoke with someone in the County and they informed him that they feel it will be all-inclusive in the future because departments won't be able to keep up with the expense of technology alone.

Mr. Belz spoke to the ordinance of fences. He asked if the provision for chain link fences in the front yard has been dropped and will it be legal to have a chain link fence in the front.

Mr. Kuser replied that, currently, it is not legal to have a chain link fence in a front yard because of the 10% blockage. He noted that the Mayor and Councilman Stecky are on the sub-committee and they are in favor of these fences in the front of the house. Mr. Kuser added that Planner Denzler informed them that it is not permitted under the

zoning ordinance, but that the Township has been lax about enforcing it.

Mr. Belz commented that everyone he has spoken to finds those fences to be extremely offensive.

President Kuser advised that there was a unanimous consensus of the Council that it would be redundant to put a provision prohibiting chain link fences in the front yard in the proposed ordinance since it is already prohibited in the zoning ordinance.

Albert Szollosi, 61 Crystal Drive, said that he was here previously to speak about the problem of Mary Avenue and found most of the Council, the Mayor and Administrator to be sympathetic. He stated that he hopes that something will be done to address the issue soon. Mr. Szollosi advised that he had sent an e-mail explaining that he spoke with an attorney to inquire about what recourse the town has if Mr. Dittmar does not allow access through his property. He said that his attorney told him that, if he has been using the road for 41 years and no one has stopped him, the town has the right to take it, if Mr. Dittmar does not want to cooperate.

Mr. Szollosi related an incident of a few years ago when he had a heart attack and his wife was delayed on that road, because of an on-coming vehicle, while she was taking him to the hospital. He spoke of another incident a year later when he was being taken by ambulance to the hospital and an on-coming vehicle could not yield to the ambulance because the road is so narrow. Mr. Szollosi asked when he can expect some movement in the direction of improving the road. He noted that the Township owns land on both sides of the road and reiterated that he does not think there would be any problem with the Township taking any necessary land by adverse possession.

Attorney Semrau commented that he is familiar with the issue and its past history. He noted that he met Mr. Szollosi about eight or nine years ago, when he filed a tax appeal. Mr. Semrau added that he did research also in that time frame, about the status of Mary Avenue. He noted that he litigated against Mr. Worts with respect to the fact that there are private roads in the issue pertaining to Mary Avenue, and that litigation just wrapped up two years ago in the Appellate Division. Attorney Semrau advised that Mary Avenue, as displayed on the Township map, does not even necessarily follow the path that's out on Mary Avenue. He said that, despite the fact that the residents of Mary Avenue have their access, it is not an approved road by any stretch. Mr. Semrau stated that a number of residents who purchased the property came to it knowing that they chose to have this rural type roadway and live in that area of the Township. The Attorney noted that, if the Council ever elected to acquire certain rights, or improve the roadway, it should be understood that the Council also has the right to either ask the entire taxpayer base of the town to pay for those improvements or to effectuate a road assessment program for only the residents that are affected by the acquisition and improvement of such roadway and access. Mr. Semrau added that those would be the residents that would pay for it because those would be the residents that would benefit from it. He told Mr. Szollosi to keep in mind that, should the road be improved, it would be Mr. Semrau's recommendation to the Council that the residents along that roadway should be the ones to pay for it and it would be a very costly endeavor. Mr. Semrau spoke about the large amount of land owned by the Township

in that area and noted that it was purchased with open space funds with the goal of preventing further development in that area. He reiterated that it would very costly to improve the road to Township standards. Mr. Semrau added that the residents in Mr. Szollosi's neighborhood would likely be asked if they were willing to incur the expense to improve the roadway.

Councilman Shaw commented that he doesn't see any reason why the town can't make a couple of pull-offs, using our trucks and employees, so that cars can pass on that road. Mr. Semrau replied that the Township could certainly investigate to try and assist, but it does not mean that it would be the town's responsibility going forward. He said that those are maintenance type endeavors that the law says that the Township can do but it doesn't mean that the town is responsible to improve the road to Township standards.

Mr. Shaw said that we should just make it safe for the people who live down there and allow for vehicles to be able to pass each other.

President Kuser asked Mr. Szollosi if that would be something that he would be happy with, or is he looking for a complete road improvement.

Mr. Szollosi replied that, right now, he just wants to be able to travel the road safely. He said that he pays taxes and his taxes should be used to improve the road that he uses and he should be able to enjoy the same safety as any other taxpayer in Denville. Mr. Szollosi added that he has to practically trespass to navigate that road and asked if it is not true that he could be arrested for trespassing. Mr. Semrau replied that he could not be arrested, based on the case that was decided in the Appellate Division. He said that Mr. Szollosi has the right to access his property and no one has interfered with that. Mr. Szollosi asked where his tax money goes.

Administrator Ward advised that he spoke with DPW Superintendent Egbert following Saturday's budget meeting and Mr. Egbert will look at various spots on municipal property where cut outs are feasible, once the snow melts. He said that he thinks this can be addressed in the Spring.

Jeff Biggs, 6 Husa Place, stated that he has a few questions and observations about the engineering issue, similar to those of Mr. Lash. He asked if there is currently a proposal from Administration to use a consulting engineer. President Kuser replied that the only thing before the Council is what is in the budget, nothing else is before them. Mr. Biggs stated that there seems to be a big push to go to a consulting engineer which he thinks, considering all the alternatives, is a wise thing to do in these economic times. He said that the issue is that it is solely for economic purposes, but economic purposes need to include more than just salaries, benefits and consulting costs. Mr. Biggs added that all he asks is, when this proposal comes before them, that the Council consider all the factors involved in this change. He said that he is most concerned with how it will be presented to the Council as far as the scope of work is concerned. Mr. Biggs asked if it anticipated that the process will be an open and fair one and spoke about the various ways that the process could be handled. He then cautioned the Council to be vigilant with regard to various conflicts of interest. Mr. Biggs noted that he would like the Council to evaluate the true pros and cons of each of the alternatives and not just

look at dollars. He commented that the Engineering Department has been decimated over the last couple of years and is down to one person. Mr. Biggs said that inspections are very important and asked who will put the scope of work together for the consultant. He noted that he is not advocating any individual but is just pointing out the pros and cons of a full-time engineer as opposed to a consulting engineer. Mr. Biggs added that there is a certain level of service that he, as a taxpayer, expects the town to maintain for his benefit as well as all the taxpayers. Mr. Biggs offered his assistance with the process of switching to a consultant and asked to be notified when it is to come before the Council.

Administrator Ward said that he will contact Mr. Biggs.

President Kuser assured Mr. Biggs that the Council will not approach this, if it happens, in a haphazard manner. He said that the Council will want to know all of the details and will do what is best for Denville.

John Ciardi, 29 Crystal Drive, asked, with regard to the billboard, if it is possible to put notification on our website to let residents know what is taking place. He inquired as to whether there are contacts for letters that the residents might want to write.

President Kuser asked Mr. Semrau if that would be acceptable, in light of the fact that the matter is going before the Planning Board. Mr. Semrau replied that he would just like to see what is being posted before it goes on the website but he does not think it will be a problem.

Mr. Fitzpatrick added that there are documents available from the Planning Board that can be posted and he intends to put information on his own personal website expressing his opinion on the issue. He said that clearly, it will not be the official opinion of the Township.

Attorney Semrau commented that the billboard is a NJ Transit project and is a source of revenue for them. He said that this is not your customary public agency, such as a School Board, that is coming in and seeking cursory approval. Mr. Semrau noted that this is a public entity coming in for a commercial purpose. He said that he understands that they are trying to raise some additional revenue to offset their fare increases and things like that and it is part of their budget. Mr. Semrau recommended that Mr. Buzak be contacted to be certain that they do have the right, being N J Transit, to come in just on a cursory review. He said that an argument can be made that this is not a public type of entity, exercising something that they were incorporated for, and that would be transportation. Mr. Semrau added that it is not as if they are coming into Denville to build a train station; they are coming in for a commercial use on a non-profit type of property. He explained in detail why it would be beneficial to have Mr. Buzak's input. President Kuser noted that Denville will not receive any tax dollars from this sign.

Mr. Ward explained that, because it is on railroad property, even though it is a commercial use, we cannot collect taxes on it.

CLOSE PUBLIC PORTION.

CORRESPONDENCE: All copied to Council.

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MATTERS OF OLD AND/OR NEW BUSINESS:

Suggested Changes to the Farmers Market Ordinance by Liisi Lascaro, Farmers Market Manager

Ms. Lascaro advised that she would like to propose a change in the wording of the Farmers Market ordinance. Clerk Costello noted that the Council members have each received a copy of Ms. Lascaro's suggestions. Ms. Lascaro asked for the attorney's opinion.

Attorney Semrau replied that he believes that Ms. Lascaro is here to talk about the added change to the ordinance, with respect to non-food items. He said that it has been suggested that it be farm-grown nursery products, flowers and soaps and candles. Mr. Semrau stated that he is a little concerned that it is very specific and perhaps should be a broader range for the non-food items. He suggested coming up with a policy that achieves the goal without being so specific. Mr. Semrau asked if she is seeking to limit items to local and regional farms. Ms. Lascaro said that is correct. He suggested language that indicates that they are non-food items but must still be farm related. Mr. Semrau asked if this provision would change the type of vendor that has been participating in the market. He asked for an example of vendors that would not be permitted. Ms. Lascaro said that there would be no service providers.

President Kuser asked for a clarification of a "non-food animal product". Ms. Lascaro explained that it is alpaca yarn and knitted products from an alpaca farm.

Councilman Andes noted that, when the Farmers Market first came before the Council, it was kept a bit restricted because the fear was that it would become like a flea market. Mr. Andes praised the market and said that it was a "home run". He commented on how popular the event is and said that he thinks this is a natural extension to the original idea.

Mr. Stecky agreed that it would be nice to expand it as long as it is kept under control.

Mr. Shaw and Mr. Fitzpatrick added their approval of the Farmers Market.

Attorney Semrau noted that he recalls from last year that there was a provision for certain food vendors and there was a discussion about health licenses for food handling. He asked if it would still be consistent, and acceptable, if a hot dog vendor wanted to come to the market. Mr. Kuser replied that nothing is to be eaten on site.

Ms. Lascaro added that they are all farm-related products and local food producers.

President Kuser asked Mr. Semrau if he has sufficient information to amend the ordinance. Mr. Semrau replied that he will send a draft to Ms. Lascaro and then send the amended ordinance to Administration and the Clerk for distribution to the Council.

Mr. Kuser said that he feels that the Council is in agreement with the changes and with the provision to open it up to regional farms. Ms. Lascaro noted that regional farms were included in the original ordinance. It was determined that the ordinance would be ready for the Council for the March 8th workshop, introduced at the March 15th meeting and adopted at the April 19th meeting. Mr. Lascaro agreed to that timetable.

ORDINANCE(S) FOR ADOPTION

#1-11 AUTHORIZES ACQUISITION OF FELS PROPERTY, 26 BROAD

STREET, BLOCK 41301, LOT 8

BE IT RESOLVED THAT AN ORDINANCE ENTITLED:
AN ORDINANCE OF THE TOWNSHIP OF DENVILLE, COUNTY OF MORRIS AND
STATE OF NEW JERSEY AUTHORIZING THE ACQUISITION OF A PORTION OF
BLOCK 41301, LOT 8

BE READ BY TITLE ON SECOND READING AND A HEARING HELD THEREON:
MOTION TO READ BY TITLE: MOVED BY MEMBER SHAW, SECONDED BY
MEMBER STECKY

AYES: SHAW, STECKY, GOLINSKI, FITZPATRICK, ANDES, KUSER

ABSENT: SMITH

OPEN PUBLIC HEARING:

Gerry Idec, 1 Longview Trail E., asked why the Township is only getting a portion of the property and not the whole block and lot.

Attorney Semrau explained that there is an improved property and a business on that property. He said that this is part of that whole block and lot and this is going to be a subdivision so that the part of the property that is not improved will be made available for public access. Mr. Semrau noted that an application for the subdivision will go before the Planning Board and the Township will take title to the rear portion of the property. Mr. Idec asked if any part of the property, other than that on which there is already a building, is buildable. Mr. Semrau explained that the Township is buying this property so that no developing will occur. Mr. Idec asked if any of the property borders the Rockaway River. The Mayor replied that it does not touch the river, it is one lot away from it, but there is a strip of open space between it and the river.

Mr. Idec asked if there is access to the river. Mr. Ward explained that it is contiguous to the Rockaway property that we are in the process of purchasing.

Mr. Idec noted that he read in the paper that the lawyer from Rockaway had some questions and he hopes that the Township will address them.

Attorney Semrau replied that he will address them right now. He said that the Rockaway attorney stated that the Township should just annex the property. Mr. Semrau explained that an annexation requires the consent of the property owner, the Borough of Rockaway and Denville. He said that he does not think that now is the time to annex the property; let the Township acquire the property and then the Township can say that they would like to annex the property that we own. Attorney Semrau stated that he thinks that the Borough Attorney had his time table out of order and that the Township is following the right protocol to try and acquire the property for the environmental and natural resource preservation. He said that the right procedure is to acquire the property and annex it, making it part of Denville, in the future.

Mr. Idec asked, if something went awry with the Rockaway property and we bought this Denville property, would we still have access to the Rockaway River.

The Mayor replied that, as he mentioned previously, this property is not contiguous to the river but a strip of land that is owned by Jersey City, and is open space, lies between this property and the river. He said that anyone would have access to the river by way of the Jersey City open space property.

Councilman Shaw agreed with the Mayor's comments and noted that he grew up on Earl Street and had a boat at the end of the street that he used for going up and down the river. The Mayor noted that the Jersey City piece is no different than McCarter Park, which is also owned by Jersey City and the public has free access to the river there as well.

Mr. Idec asked if he wanted to take a look at the property, could he just go to Broad Street and walk up the hill. Mr. Kuser suggested that Mr. Idec wait until the snow melts. Councilman Shaw explained how Mr. Idec could find his way to the property.

CLOSE PUBLIC HEARING.

BE IT RESOLVED THAT AN ORDINANCE ENTITLED:
AN ORDINANCE OF THE TOWNSHIP OF DENVILLE, COUNTY OF MORRIS AND
STATE OF NEW JERSEY AUTHORIZING THE ACQUISITION OF A PORTION OF
BLOCK 41301, LOT 8

BE PASSED ON FINAL READING AND THAT A NOTICE OF FINAL PASSAGE BE
PUBLISHED IN THE 2-23-11 ISSUE OF THE CITIZEN.

MOTION TO ADOPT: MOVED BY MEMBER SHAW, SECONDED BY MEMBER
STECKY

AYES: SHAW, STECKY, GOLINSKI, FITZPATRICK, ANDES, KUSER

ABSENT: SMITH

President Kuser asked if anyone from the Council or the public would like to have anything removed from the Consent Agenda. No one responded.

CONSENT AGENDA:

R-11-48 RESOLUTION OF THE TOWNSHIP OF DENVILLE, COUNTY OF
MORRIS AND STATE OF NEW JERSEY CONFIRMING THE SALE OF
VARIOUS ITEMS OF MUNICIPAL PROPERTY NO LONGER NEEDED
FOR PUBLIC USE

R-11-49 RESOLUTION AUTHORIZING ISSUANCE OF A SPECIAL ONE DAY
ABC LIQUOR LICENSE

R-11-50 RESOLUTION AUTHORIZING RENEWAL OF ALCOHOLIC BEVERAGE
LICENSE FOR LILTOM, LLC d/b/a/ THATCHER MCGHEE'S PLENARY
RETAIL CONSUMPTION LICENSE #1408-33-005-006

R-11-51 RESOLUTION AUTHORIZING A REFUND OF A COAH DEVELOPMENT
FEE - \$114.75

R-11-52 RESOLUTION AUTHORIZING A REFUND OF A COAH DEVELOPMENT
FEE - \$115.50

R-11-53 RESOLUTION AUTHORIZING RAFFLE LICENSES IN THE TOWNSHIP
OF DENVILLE

MOTION TO APPROVE CONSENT AGENDA: MOVED BY MEMBER SHAW,
SECONDED BY MEMBER FITZPATRICK

AYES: SHAW, FITZPATRICK, GOLINSKI, STECKY, ANDES, KUSER

ABSENT: SMITH

NON-CONSENT RESOLUTIONS:

R-11-54 RESOLUTION AUTHORIZING PROFESSIONAL SERVICES
AGREEMENT - WILLIAM DENZLER, TOWNSHIP PLANNER
MOTION TO APPROVE R-11-54: MOVED BY MEMBER ANDES, SECONDED BY
MEMBER SHAW
AYES: ANDES, SHAW, GOLINSKI, STECKY, FITZPATRICK, KUSER
ABSENT: SMITH

R-11-55 RESOLUTION AUTHORIZING RELEASE OF THE PERFORMANCE
GUARANTEE AND ACCEPTANCE OF THE MAINTENANCE
GUARANTEE FOR P.M. CONSTRUCTION
MOTION TO APPROVE R-11-55: MOVED BY MEMBER ANDES, SECONDED BY
MEMBER FITZPATRICK

DISCUSSION: Councilman Shaw asked what is left to do on this project.
Mr. Ward replied that he believes that P.M. has successfully completed their project.
He said that he thinks the confusion arises because P.M. was hired by the surety agent
of D.C.M. to complete a portion of D.C.M.'s contract. Mr. Ward advised that this
resolution relates to P. M.'s contract specifically and they have completed their project.
He said that they have met with D.C.M.'s bonding agent concerning a list of items that
need to be completed by P.M.; these items are under a completely different contract
with P.M.

AYES: ANDES, FITZPATRICK, GOLINSKI, STECKY, SHAW, KUSER
ABSENT: SMITH

Attorney Semrau noted that, since there is technically not an expenditure of funds with
the next four resolutions, it is permissible to move them together. Mr. Semrau quipped
that he checked with the Encyclopedia of Procedure, Donna Costello.

R-11-56 RESOLUTION REFUNDING THE PAYMENT OF OVERPAID TAXES
FOR THE CALENDAR YEAR 2010

R-11-57 RESOLUTION REFUNDING THE PAYMENT OF TAXES OVERPAID
FOR CALENDAR YEAR 2011

R-11-58 RESOLUTION AUTHORIZING ADVERTISING FOR BID FOR
LANDSCAPING SERVICES

R-11-59 RESOLUTION AUTHORIZING ADVERTISING FOR BID FOR GARBAGE
HAULING SERVICES

President Kuser cautioned the Council, with regard to R-11-59, that all the towns are
running for cover due to the 2% cap. He said that they are all going for bid to privatize
their garbage collection. Mr. Kuser asked the Council not to delay because he thinks
that prices will be going through the roof. Mr. Ward interjected that there is a statutory
time frame in which garbage bids must be out, but he does not have that in front of him.
Mr. Semrau noted that the bids will be advertised on February 23rd and will be accepted

on April 27th and then considered by the Governing Body.
MOTION TO MOVE R-11-56 THROUGH R-11-59: MOVED BY MEMBER FITZPATRICK, SECONDED BY MEMBER GOLINSKI
AYES: FITZPATRICK, GOLINSKI, STECKY, SHAW, ANDES, KUSER
ABSENT: SMITH

MOTION TO APPROVE MINUTES OF 1-22-11: MOVED BY MEMBER ANDES, SECONDED BY MEMBER GOLINSKI
AYES: ANDES, GOLINSKI, STECKY, SHAW, FITZPATRICK, KUSER
ABSENT: SMITH

President Kuser announced that the Council will now go into Closed Session. He asked if any action will be taken upon coming out of Closed Session. Administrator Ward advised that action may be taken.

R-11-60 RESOLUTION AUTHORIZING CLOSED SESSION - NEGOTIATIONS.

MOTION TO MOVE R-11-60: MOVED BY MEMBER GOLINSKI, SHAW

Clerk Costello noted that the resolution will have to be changed because action may be taken and the resolution should indicate that the public will be excluded from a portion of this meeting. Attorney Semrau asked for a motion, as amended.

MOTION TO APPROVE R-11-60 AS AMENDED: MOVED BY MEMBER GOLINSKI, SECONDED BY MEMBER SHAW

AYES: GOLINSKI, SHAW, STECKY, FITZPATRICK, ANDES, KUSER

ABSENT: SMITH

Council went into Closed Session at 9:37 p.m.

Council came out of Closed Session at 11:06 p.m.

Councilman Fitzpatrick asked if there is a decision on what to do about the snow removal on N. J. Transit properties. Mr. Ward replied that, for safety reasons, the DPW has been clearing the westerly side of Route 53 under the railroad bridge. Mr. Fitzpatrick suggested that the Township continue to keep the areas clear of snow.

President Kuser stated that we now need a motion from Mr. Semrau.

Attorney Semrau advised that the Council pass a motion authorizing the Mayor to enter into an agreement with the Township Engineer, Nick Rosania, to accept the material terms, which are as follows:

1. Voluntary retirement of Mr. Rosania effective April 30, 2011.
2. Mr. Rosania will waive any claims for unemployment.
3. The Township will not be responsible for any costs or attorney's fees except for a one-time payment of \$5,500, in consideration of this agreement and separation and retirement of Mr. Rosania.
4. A waiver of any and all claims by the Township and Mr. Rosania, related to his employment.
5. Resolution of personnel matters, which were discussed by Administrator Ward

during this evening's Executive Session.

6. Mr. Rosania's last day of employment will be April 30, 2011.
7. Mr. Rosania's health benefits will be paid through July 31, 2011

Mr. Semrau asked for a motion to authorize the Mayor to enter into a retirement agreement with Mr. Rosania, subject to the review of the Administrator and Labor Counsel.

Discussion: President Kuser noted that there was a discussion concerning the health insurance. He said that we need to know what our liability will be, because if Mr. Rosania has to pay, and the law is passed requiring employees to pay 33% of the cost of their health insurance, will that affect the agreement. Mr. Ward replied that it will not because this agreement is beyond his employment arrangement. He added that the \$5,500 is the cost of his current level of benefits. Mr. Kuser asked if Mr. Rosania can do whatever he wants with that \$5,500. Mr. Semrau answered that is correct, notwithstanding any changes in the law.

MOTION TO AUTHORIZE MAYOR TO ENTER INTO RETIREMENT AGREEMENT WITH NICHOLAS ROSANIA, SUBJECT TO REVIEW BY ADMINISTRATOR AND LABOR COUNSEL: MOVED BY MEMBER SHAW, SECONDED BY MEMBER STECKY

AYES: SHAW, STECKY, GOLINSKI, FITZPATRICK, ANDES, KUSER
ABSENT: SMITH

MOTION TO ADJOURN: MOVED BY MEMBER SHAW, SECONDED BY MEMBER GOLINSKI

AYES: UNANIMOUS

ABSENT: SMITH

MEETING ADJOURNED AT 11:10 P.M.

Respectfully submitted,

Kathleen A. Costello
Deputy Township Clerk