

TOWNSHIP OF DENVILLE
MUNICIPAL COUNCIL
REGULAR MEETING

OCTOBER 19, 2010

The Meeting was called to order at 7:31 p.m. by President Andes. The Salute to the Flag was recited, followed by an Invocation given by Councilman Shaw. The Open Public Meetings Act Statement was read by Township Clerk Donna Costello.

Clerk Costello requested that all cell phones be silenced for the duration of the meeting and reminded all present that this is a non-smoking facility.

ROLL CALL: FITZPATRICK, GOLINSKI, KUSER, SHAW, SMITH, STECKY, ANDES
ALSO IN ATTENDANCE: MAYOR HUSSA, ADMINISTRATOR WARD, TOWNSHIP ATTORNEY SEMRAU, POLICE CHIEF WAGNER, PLANNER DENZLER AND TAX ASSESSOR KLEIN.

LIAISON REPORTS:

Councilman Shaw reported that the Senior Citizens had an interesting meeting at which a young lady came and did aerobics with them. He explained that the teacher was able to get everyone involved, even the Seniors who were unable to stand and some who are in their nineties. Mr. Shaw noted that on Sunday, October 24th, the Senior Social will be held and everyone expects it to be a lot of fun since it will be a costume party. He invited all to attend.

Councilman Stecky reported that the Green Sustainable Committee met on October 18th and they are finalizing all requirements to join Sustainable New Jersey.

Councilman Golinski noted that the Fire Department's Halloween Parade will be held on Saturday, October 30th and he invited Mr. Shaw to don his costume again and join the Parade.

Councilwoman Smith had no report.

Councilman Kuser had no report.

Councilman Fitzpatrick advised that the Board of Education has completed its community survey, that they received a very good response and they will make the results known within the next month or so.

President Andes reported that this Saturday there will a community building of a playground at the James Dyer Park at Cook's Pond. He noted that all volunteers will be welcome.

MAYOR'S REPORT:

The Mayor noted that the Beautification Committee has produced its first newsletter, called "Twigs & Thorns" and a copy was provided to each Council member.

Mayor Hussa reported that, on Saturday, the Bike Committee will be working with JOBA (Jersey Off-road Bicycling Assn.) and NYNJTC (New York New Jersey Trail Conference) to build an off-road bike trail at Muriel Hepner Park. He said that this is part of the improvement and up-grade to that park.

The Mayor advised that there will be an Art Show entitled "Visions of Denville" beginning on October 26th. He noted that the organizers of the show are Tiffany Parisi

and Donna Compton.

Mayor Husa announced that, as of yesterday, Denville has received a letter of support from Rockaway Borough for the Rockaway property. He said that he will make sure that the Council members receive a copy of the letter.

The Mayor noted that from time to time he receives names from the American Legion or VFW of servicemen who live in Denville. He said that, in this instance, the soldier's family advised him that Sgt. William Abrahamson is home on leave. Mayor Husa asked Sgt. Abrahamson to join him at the front of the room. The Mayor noted that the Sgt. is a member of the renowned 82nd Airborne Division, which has been serving our Country since World War I. Mayor Husa presented Sgt. Abrahamson with a certificate of appreciation from the Township of Denville for his service.

Sgt. Abrahamson thanked Mayor Husa, the Council and citizens of Denville and said that he is proud to serve his Country and his home town.

The Mayor then asked Councilman Stecky to join him. He noted that Mr. Stecky is known for his involvement with the Green Sustainable Committee, but added that Mr. Stecky recently received a Federal award - the 32nd Secretary of the Army Award for Energy Efficiency. The Mayor advised that the award was presented to Mr. Stecky at the Governor's Energy Program in Dallas, TX. He noted that Mr. Stecky received a second award for saving Picatinny Arsenal almost \$1 million last year in energy and water costs. The Mayor asked for a round of applause for Mr. Stecky for his accomplishments in the field of energy conservation.

ADMINISTRATOR'S REPORT:

Administrator Ward advised that he has a few items to report on and will then introduce Tax Assessor Virginia Klein who will give a brief presentation regarding the Tax Assessor's Office and its activities.

Mr. Ward reported that the section of wall on East Shore Road that is being replaced is almost completed. He said that the DPW is working on a small section of fencing that had to be replaced and the job will then be completed. Mr. Ward noted that the road is now safe from any potential wash-out from the damaged section of wall which is now secure.

Administrator Ward advised that another project that is underway is the footbridge at the Muriel Hepner Park that goes over the dam. He said that the bridge has been closed for some time now because the abutments had rusted and corroded away making the bridge unsafe to use. Mr. Ward noted that through a State grant for recreational enhancements we were able to use 100% of the grant money to have a contractor come in and rebuild the bridge. He said that the work should begin within the next two weeks.

Mr. Ward advised that he and Superintendent Egbert met with JCP & L about a matter of providing electricity to the Bloomfield Avenue parking lot. He noted that a request was made by the organizers of the Farmers' Market to supply electricity to the vendors. Mr. Ward said that Mr. Egbert told him that there are also municipal events that take

place there and that would benefit from having electricity available. Mr. Ward advised that they are working with the electric company to have them install a locked electrical box at that location.

Administrator Ward noted that our Purchasing Agent, Darlene Price was notified on Monday that she has achieved the rank of Qualified Purchasing Agent from the State of New Jersey, which is the highest level achievable for a Purchasing Agent in this State. He said that it is based upon educational requirements that she has fulfilled, as well as her years of service in the position. Mr. Ward congratulated Darlene on that accomplishment. He noted that the practical benefit to the Township is that the bid threshold, which was previously \$25,000, increases to \$36,000 with the designation of QPA. Mr. Ward pointed out that the difference in the bid threshold will save the municipality several thousand dollars a year.

Administrator Ward stated that, at a previous Council meeting, he had suggested that the Council be provided with a brief presentation, once a month, from the various Department Heads. He said that he has worked to schedule each one to appear at a meeting during the next twelve months. Mr. Ward noted that, at a recent staff meeting, he commented that Ginny Klein will be a tough act to follow. At this point Mr. Ward gave the floor over to Virginia Klein to give a brief overview of the activities in the Tax Assessor's Office.

CTA Klein noted that she has provided the Council members with a two page report and she will just go over the highlights and then answer any questions.

Mrs. Klein explained the details of the assessed value and noted the difference between 2009 and 2010. She further explained the added assessment bills, noting that a courtesy letter precedes the billing of added assessments, and advised that she has not received one letter questioning the bills.

Mrs. Klein advised that there were 174 appeals were filed with the County Tax Board and only 15 of those had to be defended. She noted that, of those 15, only two residential appellants received a reduction and the total loss of value for the two appeals was 194,000, which equates to \$5,203 in taxes. Mrs. Klein added that 108 appeals were withdrawn and 59 were settled.

Mrs. Klein noted that, at the State appeals level, only 6 new appeals were filed. She advised that there were 14 at the County Tax Board that were affirmed and there are a total of 64 State appeals that are pending. Mrs. Klein added that some of these file every year until it is resolved, so it is not 64 new appellants, some are repeat filers.

Mrs. Klein reported that her office, to date for this year, has processed 201 deeds, have done sub-divisions, lot line adjustments, easements, added assessments, building permits, CO's as they relate to taxable improvements, 200 lists of property owners, property tax deductions, tax map revisions, farmland applications appeals, exempt property qualifications, field inspections of properties, Chapter 75 assessment notices which explains what the owners taxes will be based upon, income and expense forms that are sent to commercial properties and updating the tax list. Mrs. Klein noted that those are some of the things that are done on a day to day basis.

Councilman Golinski asked for an explanation of the deeds that have been processed by Mrs. Klein's office.

Mrs. Klein replied that it refers to a deed filed at the County but it does not necessarily mean a true sale, it could be a change of name, a divorce or estate planning.

Councilman Kuser asked when the next revaluation will take place. Mrs. Klein replied that it will be whenever the "powers that be" decide. She said that has not been decided as yet and our ratio is 67% and, when we were ordered to do a re-val in 2001, the Township was at 68%. Mrs. Klein noted that, given the state of the economy, the County is not in any rush to order a re-val. She said that they know that the municipalities don't want to spend the money on it and the re-val numbers would be based on the last three year's sales, which are flat.

Councilwoman Smith asked about our collection rate. Mrs. Klein replied that she has nothing to do with collections; that would be Ann Marie Hopler. She said that Ann Marie usually maintains a 98% or 99% collection rate, which is one of the highest in the County. Mrs. Klein said that she makes the snowball and Mrs. Hopler throws it. President Andes thanked Mrs. Klein for attending this evening and doing such a fine job.

Attorney Semrau advised that he has worked with Mrs. Klein since she first came to Denville, and knew her when she was the Assistant Assessor in Roxbury. Mr. Semrau spoke about Mrs. Klein with the highest regard and related how other attorneys know, when facing appeals in Denville, that Mrs. Klein is very tough to beat. He said that she really cares about Denville and is extremely conscientious and diligent about her work. Mr. Semrau noted that Mrs. Klein is meticulous in studying every sale as it comes through to be sure that it does not adversely affect the Township's ratio.

PUBLIC PORTION:

Marilyn Kuntz, 34 Kitchell Road, stated that she attended the October 5th Council meeting at which an issue was raised as to whether or not a current Planning Board member is, or is not, living in Denville. She said that she had assumed the issue would have been resolved by now but, evidently, it has not.

Mrs. Kuntz noted that she has been a member of the Planning Board for ten years, serving as Chairperson for three of those years, and the Board never encountered a matter of this importance. She stated that the Mayor selects the members of the Planning Board. Mrs. Kuntz commented that the members carry out their responsibilities in accordance with the N.J. Municipal Land Use Law. She said that Section 14 of P.L. 1975 c.291, 40:55D-23 clearly states that a person must be a resident of the municipality in order to serve on the Planning Board as either a regular member or an alternate. Mrs. Kuntz noted that some members of the Council have held one of those positions and know how important it is when making decisions and it is the law that members live in Denville.

Mrs. Kuntz stated that the Planning Board is the Board of permitted activities and deals with policy, the Master Plan, and the implementation of that policy through the zoning,

site plan and subdivision ordinances. She said that, in her opinion, it is deceitful and illegal for anyone to be sitting on the Board and making important decisions for the future of Denville if they do not live here. Mrs. Kuntz requested a yes or no answer as to whether this person is or is not a resident of the Township. She stated that if she were the subject of such a rumor, she would come into Town Hall and offer to sign anything necessary to prove residency and quell the rumor. Mrs. Kuntz said that this seems to be getting swept under the rug and she is very upset about it. She commented that this person should have resigned by now and, since this did not happen, he should be terminated by the Mayor. Mrs. Kuntz said that, if the Mayor doesn't want to do it, then it is up to the Council.

President Andes asked Mayor Husa to advise the Council as to what is happening with this issue.

Mayor Husa stated that he told Mrs. Kuntz right before this meeting that he had spoken with Planning Board Attorney Tiena Cofoni and that the matter does not have to be resolved tonight. He said that it does not need to be resolved until the next Planning Board meeting, which is on October 27th. The Mayor noted that the person in question was a resident of Denville as late as October 5th. He said that this is not the way to talk about our volunteers and this person has served faithfully on the Planning Board for 2 ½ years, served on the Environmental Commission for a year and has been the Republican Club Chairperson for two years. Mr. Husa noted that this person has served faithfully and needs to be given the benefit of the doubt. He said that the law states that as of September 8th, the last time he attended a Planning Board meeting, he was a resident - he had an address. Mayor Husa noted that this man sold his home and he and his family are in flux and we don't need to be talking about him using words like "deceitful". He said that we should have a little respect for this person.

The Mayor advised that this person has not had an address since October 4th but did not attend the September 22nd and October 13th meetings and would have been disqualified had he attended them. He asked Mr. Semrau for his input on this, but he said that he believes a person would have a 30 day grace period to get his affairs in order if he moves while serving on the Board. The Mayor asked Mr. Semrau if that was something that Mr. Semrau had said to this person.

Mr. Semrau replied that he had not. He said that he would refer most of this to the Planning Board. Mr. Semrau advised that he represented to this Governing Body when the question came up that and the Administrator looked into it and he made phone calls, asked for information which he forwarded to the Municipal Clerk. Mr. Semrau said that, unless something has changed, he had explained clearly what the responsibilities are, just as Mrs. Kuntz said. He noted that he knows nothing beyond the address that was given to him. The Mayor stated that he was told that this person is no longer a resident of the Township but, on the 27th of October when he needs to appear before the Planning Board, if he can provide us with an address, he will be a member in good standing. He said that, right now, nothing has been done wrong and he is fully aware that he will have to resign on that evening. The Mayor said that he does not know why

we are treating our volunteers this way.

Attorney Semrau noted, for the record and not knowing all the facts, that the Mayor stated that this person is in a state of flux and Mr. Semrau said that he does not know if that means he is or isn't a resident. Mr. Semrau advised that one could argue that, if you are not a resident at any point in time, that you may not be qualified to serve. He said that if the Mayor says that he is not a resident, without having the facts, that is not fair either. Mayor Husa replied that this person told him that he is not a resident and Attorney Cofoni alluded to the fact that, if he is not a resident on the 27th, he will have to tender his resignation at that time and, because he is not a resident, the Mayor would be obligated to accept it. Mayor Husa stated that, if this person were to resign now, he would not be obligated to accept it because there is no meeting.

Attorney Semrau noted that, from that standpoint, he would advise this Governing Body that he would defer this topic to the Planning Board. He said that the Planning Board is autonomous and quasi-judicial in some respects, so he would defer to legal counsel from the Planning Board and the membership of the Planning Board. Mr. Semrau commented that the Council, as the Governing Body who gives advise and consent to any appointment, needs to know what the status is but, as to how it is handled, he would defer it to the Planning Board.

Mayor Husa stated that he will assure everyone that the member in question will not serve if he is not a resident for one meeting. He said that nothing has been done wrong and no disparagements should be cast on this member at this time. Mr. Husa said that the October 27th meeting is a different story and, from his point of view, that resolves the issue.

Councilman Kuser responded that the Planning Board attorney was approached and stated that they wanted nothing to do with it. Mr. Kuser said that the attorney stated that it has nothing to do with her, it is an Administration issue and the Administrator should be notified. He advised that he notified the Administrator and he checked into it. Mr. Kuser stated that it is not right, the man does not live in Denville. He said that the member sold his house in August and does not live here. Mr. Kuser commented that he thinks the rules should be followed.

The Mayor replied that he just explained it and it is not an issue for tonight. He said that it is an issue that comes about on the 27th of October when we have a Planning Board meeting. The Mayor noted that it would then come into question as to whether or not the member resides in Denville. He said that it does not come into question at any time before he has to sit on the Planning Board.

Mr. Kuser responded that, with all due respect, it is not the Mayor's decision to make. He said that if there is a member on the Planning Board that does not live in this town and he would like to hear from our Township Attorney. Mr. Kuser advised that we cannot defer it to the Planning Board Attorney because they deferred it to him. He said that it is a big run around and is opening Denville up to a big lawsuit.

Mayor Husa asked Mr. Kuser if there is a Planning Board meeting tonight or tomorrow night.

Mr. Kuser stated that the rules indicate that, to be on the Planning Board, a person must live in Denville.

The Mayor responded that on the 27th of October the man could very well rent an apartment or move in with someone. He said that the person is having housing problems and the law says that it is only an issue when he sits on the Planning Board. Mr. Kuser asked if the Mayor is saying that this member does not sit on the Planning Board right now. The Mayor replied that there is no Planning Board meeting right now. Attorney Semrau, addressing the Council President, noted that he did look into this with the Administrator as recently as yesterday and had a discussion with the Planning Board member. He said that he was not aware of the discussion with the Planning Board attorney and does not want to get into a situation where this gets thrown back and forth, as Mr. Kuser said. Mr. Semrau stated that he will speak with Mr. Buzak's office tomorrow so that he and Mr. Buzak's office are on the same page relevant to this issue. He said that, hopefully, one of the offices will render a joint legal opinion as to what may or may not happen under these circumstances.

Mr. Kuser asked Mr. Semrau if this would be a matter for the Morris County Prosecutor's office because it just seems to be going back and forth here.

Mr. Semrau replied it is not and what he wants to do is get all of the facts because it can be interpreted a number of ways. He said he will make a recommendation as to what should take place as soon as possible.

The Mayor interjected that he has one more piece of information that is germane to this discussion. He stated that, in an attempt to be honorable, the member in question has submitted his letter of resignation. The Mayor said that the question before the Planning Board Attorney is whether the Mayor is obligated to accept it, prior to October 27th. Mayor Husa noted that the member may find an address, an apartment or in someone's home, before October 27th, which is highly unlikely. Mr. Husa commented that he is giving this volunteer every benefit of the doubt since he has served nobly, faithfully and diligently for three years. He said that we do not toss our volunteers out on the street in this manner and stated that he feels the entire discussion is an insult to this member. The Mayor repeated that he has the letter of resignation but is not obligated to accept it until October 27th.

Attorney Semrau advised that he will distribute a legal memo, and is sure Mrs. Cofoni will do the same with the Planning Board, so there is no confusion going forward.

CLOSE PUBLIC PORTION.

CORRESPONDENCE: All copied to Council.

MATTERS OF OLD AND/OR NEW BUSINESS:

Councilman Shaw left the dais to address the Council as a representative of VFW Post 2519 of Denville.

Mr. Shaw advised that he is here to request relief from Construction Dept. costs for an ADA compliant toilet facility at the Post Home, at 71 Ford Road. He explained that the

Post applied for a Community Development Grant in the amount of \$81,000 in 2008 and it was rejected. Mr. Shaw noted that a subsequent request in 2009 in the amount of \$61,000 was approved but additional problems came to light. He said that the initial contact with the Building Department resulted in an estimate of about \$1,500 for permits for structure, plumbing and electric. Mr. Shaw noted that the organization does not have a lot of money and advised that a recent spaghetti dinner that they ran made enough money to, possibly, pay for the heating to get the Post through the winter. Mr. Shaw explained that, due to the Federal guidelines for pay structure and benefits, labor for the project will cost a lot more than they were prepared to pay. He said that the Post had been discussing plans to have luncheons for veterans from the VA Hospital and to invite veterans who are returning from war zones to visit the Post. Mr. Shaw advised that the funding structure and will not have enough money to build a ramp to allow them access to the building. He said that if the Council will approve the waiving of the Construction Dept. permit fees it would be very helpful to the Post.

President Andes asked Mr. Ward if there are funds available to handle that request. Mr. Ward replied that, if the Council will provide him with a consensus, he will draft a formal resolution and obtain a certification of funds for the next meeting for ratification by the Council. He said that with that ratification he will also notify the Building Dept. Mr. Ward commented that he does not anticipate any problems but feels that the proper procedure should be followed.

President Andes took a consensus of the Council to waive the permit fees:

Kuser	Yes	Smith	Yes	Fitzpatrick	Yes
Golinski	Yes	Stecky	Yes	Andes	Yes
Shaw	Abstain				

President Andes asked Mr. Shaw if the ramp is part of the grant project. Mr. Shaw replied that it had been but was removed in order to save money to pay the bills. He said that they really didn't want to eliminate it because it is essential for handicapped accessibility.

President Andes advised that, a few years back, he had a Boy Scout do his Eagle Scout project by building a handicapped accessible ramp at the old School House. He noted that he has a few boys asking him for ideas for their Eagle Scout projects right now. Mr. Andes suggested that, if the VFW is interested, he will speak further with Mr. Shaw and will look into ways to raise money for the materials. Mr. Shaw replied that any help will be appreciated. Councilman Kuser added that he has also advised Mr. Shaw that he is willing to help in any way that he can.

Upon his return to the dais, Councilman Shaw invited the Council members, Mayor and anyone in the audience tonight to attend the 62nd Annual Memorial Service for Veterans Day on Sunday, November 7th at 2:00 p.m. at the Riverview School. He said that it is a very important day for the Post members to recognize all who have served, both living and deceased. Mr. Shaw commented that we will always remember them because we are here because they were there.

Councilman Shaw stated that he would like to make a motion that, from this point

forward, all capital projects which are anticipated to cost \$1 million or more, prior to the adoption of any associated bond ordinances, be placed on the ballot so that the taxpayers of Denville can directly express their desire to be indebted for the future.

Mr. Stecky seconded the motion.

Attorney Semrau asked if Mr. Shaw was proposing a binding referendum. Mr. Shaw replied that he is proposing a non-binding referendum. He added that he feels that this should be discussed at a workshop session.

President Andes commented that he had just mentioned that to Mr. Semrau. He said that he does not think it is something that can just be put out there as a motion without further discussion. He said that, if it is the desire of the Council, we will put it on a future workshop.

Councilman Stecky stated that, if Mr. Andes is tabling this motion, he wants it tabled to a specific workshop. He said that there is a workshop scheduled for December 14th.

Councilwoman Smith suggested that the motion be withdrawn with the understanding that the Council President will put it on the earliest possible workshop, when the CFO can be present to explain the costs of a referendum. She said that, as long as there is that assurance, the motion should be withdrawn.

Mr. Shaw noted that it takes a lot of work to get something on the ballot and there are definitely costs involved as well. He said that it can be done in a timely manner and agreed that it should be put on a workshop.

President Andes requested that the CFO and the Administrative staff at the next workshop meeting.

Councilman Shaw withdrew his motion and the Council can discuss it at the workshop meeting.

Mr. Stecky interjected that he has seconded the motion and he doesn't think it has to be withdrawn and we are already good to go with the workshop.

Councilwoman Smith explained that, if someone has made a motion, has not withdrawn it and it is still on the table, the Council either has to vote on it, make a motion to table it or withdraw it.

Attorney Semrau noted that the motion was not to ask for this to be on a workshop, it was to make it a policy so his recommendation is that the motion needs to be withdrawn. Mr. Semrau said that it comes down to a discussion as to when it will be on a workshop. Clerk Costello advised that historically, during the last four or five years, the December workshop has been cancelled. She said that some were cancelled due to inclement weather and others because there was no action to be taken. Mrs. Costello added that there is no workshop in November due to the League of Municipalities Convention. Councilwoman Smith interjected that the budget process is started in the beginning of the year.

President Andes suggested that it be done at the next workshop, either in December or in January, with the CFO and Administrator in attendance.

Mr. Semrau advised that the motion has been withdrawn and asked Mr. Stecky if he will withdraw his second of the motion.

Mr. Stecky asked if we couldn't just table the motion and pick it up after the workshop. Mr. Semrau advised that it was not tabled, it was withdrawn. Mr. Stecky then said that, on the advice of the Attorney, he will withdraw his second.

ORDINANCE(S) FOR ADOPTION:

#27-10 AMENDS REGULATIONS FOR TEMPORARY SIGNS

BE IT RESOLVED THAT AN ORDINANCE ENTITLED:

AN ORDINANCE TO AMEND SECTION 19:5.909 "TEMPORARY SIGNS" OF CHAPTER XIX, LAND USE OF THE REVISED ORDINANCES OF THE TOWNSHIP OF DENVILLE, COUNTY OF MORRIS, STATE OF NEW JERSEY

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

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

OPEN PUBLIC HEARING: No one wished to be heard.

CLOSE PUBLIC HEARING.

BE IT RESOLVED THAT AN ORDINANCE ENTITLED:

AN ORDINANCE TO AMEND SECTION 19:5.909 "TEMPORARY SIGNS" OF CHAPTER XIX, LAND USE OF THE REVISED ORDINANCES OF THE TOWNSHIP OF DENVILLE, COUNTY OF MORRIS, STATE OF NEW JERSEY

BE PASSED ON FINAL READING AND THAT A NOTICE OF FINAL PASSAGE BE PUBLISHED IN THE 10-27-10 ISSUE OF THE CITIZEN.

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

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

ORDINANCE(S) FOR INTRODUCTION:

#28-10 MORRIS AVENUE SPEED LIMIT CHANGES

President Andes noted that, on the advice of the Municipal Attorney, since he lives at 168 Morris Avenue, he will recuse himself and ask Clerk Costello to handle this portion of the meeting.

BE IT RESOLVED THAT AN ORDINANCE ENTITLED:

AN ORDINANCE OF THE TOWNSHIP OF DENVILLE, COUNTY OF MORRIS, STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER 7, TRAFFIC, SCHEDULE XVI, SPEED LIMITS, OF THE REVISED GENERAL ORDINANCES

BE INTRODUCED AND READ BY TITLE ON FIRST READING:

MOTION TO INTRODUCE: MOVED BY MEMBER KUSER, SECONDED BY MEMBER STECKY

DISCUSSION: Clerk Costello noted that the Chief of Police is present to answer any

questions with regard to this ordinance.

Councilman Stecky asked about the length of the road. Chief Wagner replied that it is a little more than two miles. Mr. Stecky noted that three different speed limits are being proposed for that road and that he thinks that is too many speed changes.

Chief Wagner advised that the speed limits on Morris Avenue had been investigated several years ago by the State of New Jersey. He noted that, going back eighteen months or two years ago, anytime there was a speed limit change proposed, it had to be approved by the State, after a careful study they made recommendations for three different speeds, based on that study. The Chief advised that, at the beginning of Mr. Ward's tenure, the issue of Morris Avenue speed limits was again raised and it was decided that an independent Engineer be employed to do a new study on the section of Morris Avenue from its intersection with Savage Road, east to Diamond Spring Road. He said that an extensive study was done, based partly on traffic information provided by the Police Department and they made the recommendation. The Chief noted that his concern with it is that, right now the 85th percentile speed, on the section of road where the speed limit is 40 mph, is 42 or 43 mph. He said that when the limit is dropped to 35 mph, people will be going 7 or 8 miles over the speed limit. The Chief noted that additional signs will be placed along that roadway and noted that he is very impressed with the study that was done. He added that, whether or not driving habits along that road will change remains to be seen. The Chief stated that he is okay with the three different speeds and said that it occurs on various roadways. He noted the areas where the speed limit changes along Morris Avenue.

Councilwoman Smith commented that the RBA report recommends two different speeds and added that it makes more sense than having three speed limits on the same road. She said that she is more comfortable with RBA's recommendation, unless the Chief can convince her differently.

The Chief explained that the RBA study only encompassed the area from Savage Road to Diamond Spring Road; it did not include the industrial area down by the Hampton Inn. Mrs. Smith responded that she would be more comfortable if that speed limit were lowered. The Chief advised that the study was undertaken due to complaints from residents along the area from Savage Road to Diamond Spring Road and that is why the study was limited to that area. He said that there have been no complaints regarding the industrial section of the road. The Chief added that it is clearly marked and no one has complained that it is confusing.

Attorney Semrau interjected that he believes Mrs. Smith's question is whether the 45 mph speed limits from Ford Road to Spear Lane and 35 mph from Spear Lane to Savage Road could be changed, and is there a recommendation to change them, at this time. The Chief replied that there is not such a recommendation because it was not part of the scope of the project and there have been no requests from anyone to have them reduced.

Mrs. Smith noted that there are three speed changes within a half a mile. Mrs. Smith commented that bike paths are planned for Morris Avenue and she would rather see

the speed limits be more consistent.

Attorney Semrau advised that, although he and the Chief understand her position, since this area was not within the scope of the study, the Governing Body does not have the legal authority to change that unless the study is expanded and comes back with that recommendation. Mrs. Smith suggested a progressive reduction of speed up to Diamond Spring Road.

The Chief replied that the speeding problem between Cedar Lake Road and Diamond Spring Road would then be astronomical. He said that the way people drive on that road is predicated on the design of the road and, that stretch of road is a straightaway. The Chief noted that the traffic engineers gauge the speed limit based on what speed 85% of the drivers are driving at now.

Mr. Semrau advised that the only recommendations that can be considered, at this time, are those that are made in the report. He said that the speed limit cannot be changed without an additional report that would support such a change.

Councilman Fitzpatrick commented that, although it may not appear to be the right move at first look, after going over it carefully he believes it is the right move. He asked the Chief how the enforcement will be handled in that area, from Cedar Lake Rd. to Diamond Spring Rd. The Chief replied that, once the Council acts, the new speed signs will go up and it will be watched and police presence will be put out there, as well as the electronic sign board. He added that enforcement will be done during peak hours.

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

RECUSE: ANDES

BE IT RESOLVED THAT AN ORDINANCE ENTITLED:
AN ORDINANCE OF THE TOWNSHIP OF DENVILLE, COUNTY OF MORRIS, STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER 7, TRAFFIC, SCHEDULE XVI, SPEED LIMITS, OF THE REVISED GENERAL ORDINANCES BE PASSED ON FIRST READING

AND BE IT FURTHER RESOLVED THAT SAID ORDINANCE SHALL BE CONSIDERED FOR FINAL PASSAGE AT THE MEETING OF THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF DENVILLE ON 11-23-10 AT 7:30 P.M. IN THE EVENING PREVAILING TIME, AT THE MUNICIPAL BUILDING IN SAID TOWNSHIP OF DENVILLE AT WHICH TIME AND PLACE ALL PERSONS INTERESTED SHALL BE GIVEN AN OPPORTUNITY TO BE HEARD CONCERNING SAID ORDINANCE.

BE IT FURTHER RESOLVED THAT THE MUNICIPAL CLERK BE AUTHORIZED AND DIRECTED TO ADVERTISE THIS ORDINANCE IN THE CITIZEN ACCORDING TO LAW.

MOTION TO PASS ON FIRST READING: MOVED BY MEMBER SHAW, SECONDED BY MEMBER KUSER

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

RECUSE: ANDES

Township Council

President Andes noted that a presentation by Police Chief Wagner regarding a proposed underage drinking ordinance was given at a previous meeting. He said that the Council decided it should be further discussed at a workshop but, since there is no workshop planned for the remainder of the year and tonight's agenda is fairly light, Mr. Andes thought it could be discussed this evening.

Mr. Andes asked the Chief for a brief re-cap of his request for this ordinance.

Chief Wagner explained that he is requesting that the Council adopt an ordinance that will fill in a loophole created in the Criminal Justice Code of New Jersey. He said that the ordinance would prevent persons under the age of 21 from consuming alcohol on private property. The Chief noted that, currently, the law states that on a street, in a car or on public transportation it is unlawful to possess or consume alcoholic beverages under the age of 21 but private property is excluded. He said that this ordinance will not be enforceable if parents allow the consumption by a child, or if it is a religious or ceremonial event.

Attorney Semrau noted, for the record, that there was an extensive discussion at the last meeting and the Chief explained some of these issues faced by the Police Department without this ordinance. He advised that underage drinkers are aware that neighboring towns have this type of ordinance, and that Denville does not. Mr. Semrau indicated that this causes a bit of difficulty for the Denville Police. He said that, if there are no other questions, he would just add that Chief Wagner has spoken to a number of other Police Chiefs who advised Chief Wagner that the ordinance held up very well. Mr. Semrau stated that, if there are no other questions, we will go forward with the introduction.

Councilman Fitzpatrick noted that his concern is the severity of the penalties, such as loss of license for something that may not be that serious an offense; and the stigma that goes along with the violation. He commented that the Chief had stated that it is already part of the State law.

Chief Wagner replied that the State law says that if you consume alcoholic beverages on public property there is a fine and the potential loss of license. He said that the penalty phase of this ordinance is almost identical to the State. The Chief pointed out that the wording is "may" result in loss of license, not "shall", and would likely depend on the circumstances surrounding the arrest.

Mr. Semrau added that the loss of license is often a last resort, with community service or some other kind of service being an option agreed to by the Prosecutor and arresting Officer.

Councilwoman Smith noted that, at the last meeting, she recommended that this ordinance be posted on the web site, with a short explanation, and that it be given press coverage as an ordinance that we will introduce at our next meeting. The Clerk advised that it was posted on the web site the day after the meeting. Chief Wagner added that he had a discussion with a reporter from the Star Ledger, who is in attendance this evening.

Councilman Golinski commented that the violation would be a violation of a local

ordinance and asked if the Municipal Judge has the authority to suspend a license. The Chief replied that he does, if he chooses to impose that penalty.

Councilman Kuser asked if it is not so that the Police must have probable cause to go to a home. The Chief replied that they must have reasonable suspicion and, usually, it is a noise or parking complaint that draws the Police to these parties.

Councilman Kuser asked about tips that Officer Torkos might see on Facebook. The Chief replied that, in most cases when that occurs, the Police make an immediate phone call to the parents at the location of the party and alert them of the plans. In response to a question from Mr. Kuser, the Chief advised that the Police would have to prove beyond a reasonable doubt, that any young person that is charged was in possession of, or was consuming an alcoholic beverage.

The avoidance of invasion of privacy was discussed and explained by Chief Wagner.

The Chief reiterated that an ordinance that tramples the constitutional rights of our residents cannot be adopted by this Council.

President Andes asked for a consensus to Introduce this ordinance at the next meeting.

Golinski Yes Stecky Yes Shaw Yes Smith Yes Kuser Yes

Fitzpatrick Yes Andes Yes

HOTEL OVERLAY ORDINANCE.

Attorney Semrau advised that earlier this year a property owner came forward and made a request to seek a zoning amendment to a property at Ford Road and Morris Ave. He said that the decision is within the Council's discretion and the Council suggested to the property owner that, in order to facilitate a formidable discussion, the owner post an escrow amount. Mr. Semrau noted that the Township could then have its professionals take a look at the property, with no cost to the Township and with no guarantee. He said that it would be a review, from the Township's perspective, to see if it would be something of interest from a policy point of view. Mr. Semrau commented that Planner Denzler has reviewed that proposed change and is here tonight to provide his preliminary thoughts and recommendations. He noted that this is a process and, if Mr. Denzler gives an affirmative recommendation, the matter would then be sent to the Planning Board. Mr. Semrau explained that the Planning Board would review their critical documents, such as the reexamination report and the Master Plan to see if this type of zone change would be consistent with the Township's objectives. He said that it would then come back to the Council, Mr. Denzler would come back and the Council could direct him to draft an ordinance and any necessary planning documents to move the process back through the Planning Board, and back to the Council in the form of a zoning change or amendment.

Mr. Semrau advised that the question tonight is purely from a planning perspective and is not dealing with a specific property or ratable or any other matter.

Planner Denzler advised that he had looked at the request for the re-zoning to modify the zoning criteria as it addresses hotel usage in this area of the Township, which is Ford Road and Morris Avenue. He said that, from a planning perspective he looked at

three criteria: land use itself, the intensity of the use as a result of the changes requested and the economic impact to the Township. He explained his findings for each of these criteria, touching on traffic and the connectivity to major roadways. Mr. Semrau interjected that it is his understanding that the requested change is to be more tailored to the more modern type of hotel that is currently being built. He asked Mr. Denzler if the re-examination supports this kind of hotel. Mr. Denzler replied that the re-exam follows the recommendations of the 2000 Master Plan to allow lodging and hotel uses in this area of the Township.

Mr. Semrau asked Mr. Denzler if he is saying that, from a Planning perspective, this is something that would be consistent with some of the overall goals of the Township's planning documents. Mr. Denzler said that is correct. Mr. Semrau stated that the next step would then be for the Council to send this to the Planning Board for their review and recommendations. He reiterated the process that would then be followed.

Attorney Semrau advised the Council that they will be asking for a consensus, which will not bind the Council in any way, since Mr. Denzler is saying that there is merit to a zoning amendment, to continue to go forward with this request and send it to the Planning Board.

Councilwoman Smith asked what the changes would be if we went to the hotel overlay. Mr. Denzler replied that it would be a four or five story building with a building height of typically, fifty-five feet and the FAR would go to 60%, whereas the Industrial Zone currently has an FAR of 25%. He said that, basically, the changes would be height, FAR and signage.

President Andes asked for a consensus from the Council to send this proposed hotel zone to the Planning Board for their review and comment.

Fitzpatrick Yes Kuser Yes Smith Yes Shaw Yes Stecky Yes
Golinski Yes Andes Yes

President Andes asked if anyone from the Council or the public wished to have anything removed from the Consent Agenda.

Councilman Stecky asked to have R-10-222 removed.

CONSENT AGENDA:

R-10-214 RESOLUTION AUTHORIZING REINSTATEMENT OF THE ORIGINAL SEWER ASSESSMENT INSTALLMENT PLAN FOR CERTAIN PROPERTIES IN THE TOWNSHIP OF DENVILLE

R-10-215 RESOLUTION AUTHORIZING THE REFUND OF MONEY DUE TO THE REDEMPTION OF A TAX SALE CERTIFICATE IN THE AMOUNT OF \$1,474.11

R-10-216 RESOLUTION AUTHORIZING ACCEPTANCE OF FUNDS FOR BODY ARMOR REPLACEMENT - \$3,180.80

R-10-217 RESOLUTION AUTHORIZING ACCEPTANCE OF FUNDS FOR UNITED STATES DEPARTMENT OF JUSTICE BULLETPROOF VEST PARTNERSHIP GRANT - \$2,145.00

R-10-218 RESOLUTION AUTHORIZING ACCEPTANCE OF FUNDS FOR DRUNK DRIVING ENFORCEMENT FUND 2010 HIGHWAY SAFETY GRANT - \$11,941.21

R-10-219 RESOLUTION AUTHORIZING AGREEMENT FOR PUBLIC HEALTH SERVICES BETWEEN THE TOWNSHIP OF DENVILLE AND THE TOWNSHIP OF BOONTON

R-10-220 RESOLUTION ESTABLISHING A "DEDICATION BY RIDER" FOR CONTRIBUTIONS, DEPOSITS AND FEES TO THE TOWNSHIP OF DENVILLE BUDGET

R-10-221 RESOLUTION OF THE TOWNSHIP OF DENVILLE AUTHORIZING THE INSTITUTION OF AN IN-REM TAX FORECLOSURE ON BLOCK 41102, LOT 911, LOCATED AT 8 TOMAHAWK TRAIL

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

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

R-10-222 RESOLUTION AUTHORIZING EXECUTION OF A DEVELOPER'S AGREEMENT WITH TIMOTHY MAHONEY, JR., FOR CONSTRUCTION OF SINGLE FAMILY HOMES ON BLOCK 60207, LOT 305 AND BLOCK 60207, LOT 314 LOCATED AT 27 AND 29 ROCKAWAY AVENUE

MOTION TO APPROVE R-10-222: MOVED BY MEMBER KUSER, SECONDED BY MEMBER STECKY

DISCUSSION: Councilman Stecky asked why Andover is mentioned in the contract. Attorney Semrau replied that it is on the Resolution not on the contract and it is a typographical error. Mr. Stecky requested more information on this resolution because he said that he does not recall ever seeing it before.

Councilwoman Smith noted that she will not be participating in this discussion since she must recuse herself from the vote.

Mr. Denzler explained that the resolution involves a two lot subdivision at the end of Rockaway Avenue. He further explained that they were existing lots with some minor lot line adjustments, noting that in this area Rockaway Avenue is a paper street and required a road extension and modifications to a turn-around area, as well as steep slopes. Mr. Denzler noted that they were unimproved, existing lots requiring the extension of Rockaway Avenue.

Mr. Stecky commented that it involves variance relief for approximately seven items and asked if that is not pretty significant.

Mr. Denzler explained that they were existing lots that are wider than they are deep, there was some steep slopes relief; with regard to soil movement and tree removal Mr. Denzler stated that he does not believe a variance was needed. He added that the Board does not grant variances for soil removal. Mr. Denzler identified the property as being behind Cedar Lake. He said that there are several streets in that area that are unimproved and this was just an extension to where Rockaway Avenue ended.

Administrator Ward suggested that the Attorney provide some input. Attorney Semrau noted that the wording basically comes directly from the resolution of the Board of Adjustment. He advised that there was approval granted, after a notice and hearing, and all of the terms in the developer's agreement are to protect the Township. Mr. Semrau added that the Council is not granting approval because that has already been given by the Board of Adjustment. He noted that this was not put on the agenda until the developer's attorney agreed to the terms and conditions.

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

MOTION TO APPROVE MINUTES OF 10/5/10: MOVED BY MEMBER SMITH,
SECONDED BY MEMBER FITZPATRICK.

Councilman Golinski noted that the Mayor's statement from that evening is not attached to the minutes. It was noted that the Mayor had given it to the Deputy Clerk and she overlooked it when preparing the minutes. Clerk Costello advised that the statement will be copied and put in the Council members' mail boxes. Clerk Costello asked Mrs. Smith and Mr. Fitzpatrick if they will withdraw the motion and second. Both agreed to do so.

R-10-223 RESOLUTION AUTHORIZING CLOSED SESSION

President Andes noted that, at the conclusion of the Closed Session, action may or may not be taken.

MOTION TO APPROVE R-10-223: MOVED BY MEMBER SMITH, SECONDED BY
MEMBER SHAW

Attorney Semrau noted for the record that the discussion will be regarding the Diocese of Paterson property and the Mayor would like to discuss the Rockaway Borough property.

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

Mr. Semrau added that there will also be an update on the Unfair Practice lawsuit during the Closed Session.

Council went into Closed Session at 9:21 p.m.

Council came out of Closed Session at 10:02 p.m.

President Andes called for a motion regarding the diocese property.

Attorney Semrau suggested that the motion being called for by President Andes be worded as follows:

MOTION TO TERMINATE THE AGREEMENT BETWEEN THE TOWNSHIP OF
DENVER AND THE DIOCESE OF PATERSON FOR THE PURCHASE OF LAND.

Mr. Semrau stated that it should be noted that the Township has made extensive efforts to find ways to remediate this site, but the Diocese has not consented to share in such remediation. He said that the Township would be willing to revive the terms of the agreement if the Diocese were to pursue Farmland Preservation or if additional funding

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would be expended by the Diocese toward cleaning up the property.
MOVED BY MEMBER SHAW, SECONDED BY MEMBER SMITH
AYES: SHAW, SMITH, FITZPATRICK, KUSER, STECKY, GOLINSKI, ANDES

President Andes called for the following motion concerning the acquisition of the Rockaway property.
MOTION AUTHORIZING A CONTRIBUTION FROM THE DENVILLE OPEN SPACE TRUST FUND, PREDICATED ON APPROVAL FROM ATTORNEY FRED SEMRAU THAT IT CAN BE DONE, IN THE AMOUNT OF \$10,000: MOVED BY MEMBER SHAW, SECONDED BY MEMBER GOLINSKI
AYES: SHAW, GOLINSKI, FITZPATRICK, KUSER, STECKY, ANDES
NAY: SMITH

R-10-222A RESOLUTION AUTHORIZING RAFFLE LICENSE(S) IN THE TOWNSHIP OF DENVILLE
MOTION TO APPROVE R-10-222A: MOVED BY MEMBER SHAW, SECONDED BY MEMBER FITZPATRICK
AYES: SHAW, FITZPATRICK, KUSER, SMITH, STECKY, GOLINSKI, ANDES

MOTION TO ADJOURN: MOVED BY MEMBER STECKY, SECONDED BY MEMBER FITZPATRICK
AYES: STECKY, FITZPATRICK, KUSER, SMITH, SHAW, GOLINSKI, ANDES

MEETING ADJOURNED AT 10:05 P.M.

Respectfully submitted:

Kathleen A. Costello
Deputy Township Clerk