

LEGISLATIVE MINUTES

MARLBORO TOWNSHIP COUNCIL MEETING

December 4, 2008

The Marlboro Township Council held a regularly scheduled meeting of the Township Council of the Township of Marlboro on December 4, 2008 at 8:00 P.M. at the Marlboro Municipal Complex, 1979 Township Drive, Marlboro, New Jersey.

Council President Cantor opened the meeting and announced that pursuant to the provisions of the Open Public Meetings Act, notice of this regularly scheduled meeting of the Township Council of the Township of Marlboro was faxed to the Asbury Park Press, the Star Ledger and News Transcript on January 4, 2008; faxed to the Board of Education Office; posted on the Bulletin Board of the Municipal Building and filed in the office of the Municipal Clerk.

Cub Scout Pac 86, Den 13 led the Salute to the Flag.

The Clerk called the Roll.

PRESENT: Councilman LaRocca, Councilwoman Marder, Council Vice President Rosenthal, Councilwoman Tragni and Council President Cantor.

Also present were: Mayor Jonathan L. Hornik, Ron Gordon, Esq., Business Administrator Alayne Shepler, Municipal Clerk Alida Manco, and Deputy Clerk Deborah Usalowicz.

Councilman LaRocca motioned to table Resolution # 2008-342/Ord. # 2008-28 (As Amended) Amend Chapter 84 - Fences Certain Rear Yards on Vanderburg Road - Tabled 10/16, 11/13). This was seconded by Councilwoman Marder and ask there was no objection, the Clerk was asked to cast one ballot.

Council President Cantor opened the Public Hearing on Ordinance # 2008-38 (Recreation Fees 2008). As there was no one who wished to speak, the Public Hearing was closed. The following Resolution # 2008-389/Ord. # 2008-38

((Recreation Fees 2008) was introduced by reference, offered Council Vice President Rosenthal, seconded by Councilman LaRocca and passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2008-389

BE IT RESOLVED by the Township Council of the Township of Marlboro that an Ordinance entitled:

ORDINANCE #2008-38_

AN ORDINANCE AMENDING AND SUPPLEMENTING
CHAPTER 117 "RECREATIONAL FACILITIES" OF
THE CODE OF THE TOWNSHIP OF MARLBORO

which was introduced on November 13, 2008, public hearing held December 4, 2008, be adopted on second and final reading this 4th day of December, 2008.

BE IT FURTHER RESOLVED that notice of the adoption of this ordinance shall be advertised according to law.

Council President Cantor opened the Public Hearing on Ordinance # 2008-39 (Amending Chapter 113 - Grading, Drainage and Erosion). Pat Korabiak - 103 Crine Road - spoke about requiring landscaper permits. As there was no one else who wished to speak, the Public Hearing was closed. The following Resolution # 2008-390/Ord. # 2008-39 (Amending Chapter 113 - Grading, Drainage and Erosion) was introduced by reference, offered Councilman LaRocca, seconded by Councilwoman Tragni and passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2008-390

BE IT RESOLVED by the Township Council of the Township of Marlboro that an Ordinance entitled:

ORDINANCE # 2008-39

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 113 "PROPERTY MAINTENANCE" BY DELETING SECTION 113-6.1, "GRADING AND DRAINAGE" IN ITS ENTIRETY AND REPLACING IT WITH A NEW SECTION 113-6.1 ENTITLED "GRADING, DRAINAGE AND EROSION" TO SET FORTH

REGULATIONS TO PREVENT THE ACCUMULATION OF STAGNANT WATER AND TO PREVENT THE EROSION OF SOILS ONTO THE PUBLIC RIGHT OF WAY

which was introduced on November 13, 2008, public hearing held December 4, 2008, be adopted on second and final reading this 4th day of December, 2008.

BE IT FURTHER RESOLVED that notice of the adoption of this ordinance shall be advertised according to law.

The following Resolution # 2008-391/Ord. # 2008-40 (Amend Chapter A-157 - Cable Franchise Renewal) was introduced by reference, offered by Councilwoman Tragni, seconded by Councilwoman Marder and passed on a roll call vote of 5 - 0 in favor. There was a brief discussion between Mayor, Council Vice President Rosenthal and Ron Gordon, Esq. during which the renewal process was explained.

RESOLUTION # 2008-391

BE IT RESOLVED by the Township Council of the Township of Marlboro that an Ordinance entitled:

ORDINANCE # 2008-40

AN ORDINANCE GRANTING MUNICIPAL CONSENT FOR THE OPERATION OF A CABLE TELEVISION SYSTEM WITHIN THE TOWNSHIP OF MARLBORO, NEW JERSEY TO CABLEVISION OF MONMOUTH, INC.

be introduced and passed on first reading and that the same be advertised according to law; and

BE IT FURTHER RESOLVED that the same be considered for final passage on December 18, 2008 at 8:00 p.m. at the Marlboro Municipal Complex, 1979 Township Drive, Marlboro, New Jersey, at which time all persons interested will be given an opportunity to be heard concerning said ordinance.

ORDINANCE # 2008-40

AN ORDINANCE GRANTING MUNICIPAL CONSENT FOR THE OPERATION OF A CABLE TELEVISION SYSTEM WITHIN THE TOWNSHIP OF MARLBORO, NEW JERSEY TO CABLEVISION OF MONMOUTH, INC.

WHEREAS, the Township Council of the of the Township of Marlboro (hereinafter referred to as the "Township") determined that Cablevision of Monmouth, Inc., (hereinafter referred to as "the Company" or "Cablevision") had the technical competence and general fitness to operate a cable television system in the Township, and, by prior ordinance granted its Municipal Consent ("Municipal Consent") for Cablevision to obtain a non-exclusive franchise for the placement of facilities and the establishment of a cable television system in the Township (the "Franchise"); and

WHEREAS, by application for renewal Municipal Consent filed with the Township and the Office of Cable Television on or about March 12, 2008, Cablevision has sought a renewal of the Franchise; and

WHEREAS, the Township having held public hearings has made due inquiry to review Cablevision's performance under the Franchise, and to identify the Township's future cable-related needs and interests and has concluded that Cablevision has substantially complied with its obligations under the Franchise and has committed to certain undertakings responsive to the Township's future cable-related needs and interests; and

WHEREAS, by Resolution adopted on June 26, 2008, the Township Council issued its Municipal Consent and authorized the negotiation of the renewal of the Franchise Agreement in the form of a Cable Television Ordinance; and

WHEREAS, the Cable Television Ordinance set forth below embodies the commitments of Cablevision to the Township; and

WHEREAS, imposition of the same burdens and costs on other franchised competitors by the Township is a basic assumption of the parties.

NOW THEREFORE, BE IT ORDAINED, by the Township Council of the Township of Marlboro, County of Monmouth, and State of New Jersey that this Franchise Agreement in the form of Cable Television Ordinance herein shall, upon approval of same by the Board of Public Utilities of the State of New Jersey, supercede and replace, in its entirety, Franchise Agreement in the form of Cable Television Ordinance #2001-19 (as amended) as follows:

SECTION 1. DEFINITIONS.

For the purpose of this Ordinance the terms defined above shall have the meanings there indicated, and the following additional terms shall have the following meanings:

"Act" or "Cable Television Act" shall mean that statute of the State of New Jersey relating to cable television, known as the Cable Television Act, N.J.S.A. 48:5A-1 et seq.

"Application" shall mean Cablevision's application for Renewal of Municipal Consent, which application is on file in the Township Clerk's office and is incorporated herein by reference and made a part hereof, except as modified, changed, limited or altered by this Ordinance.

"Board" shall mean the Board of Public Utilities of the State of New Jersey or its successor agency.

"Township" shall mean the governing body of the Township of Marlboro in the County of Monmouth, and the State of New Jersey.

"Company" shall mean Cablevision of Monmouth, Inc. ("Cablevision") the grantee of rights under this Ordinance.

"FCC" shall mean the Federal Communications Commission.

"Federal Act" shall mean that federal statute relating to cable communications commonly known as the Cable Communications Policy Act of 1984, 47 U.S.C. Section 521 et seq. and the Telecommunications Act of 1996, or as those statutes may be amended.

"Federal Regulations" shall mean those federal regulations relating to cable television services, 47 C.F.R. Section 76.1 et seq. (and, to the extent applicable, any other federal rules and regulations relating to cable television, including but not limited to, those described in 47 C.F.R. Section 76.3), or as such regulations may be amended.

"Standard installation" shall mean the installation of drop cable to a customer's premise where the distance from the point of entry into the building being served is less than 150 feet from the active cable television system plant.

"State" shall mean the State of New Jersey.

"State Regulations" shall mean those regulations of the State of New Jersey Board of Public Utilities relating to cable television. N.J.A.C. 14:17-1.1 et seq. and N.J.A.C. 14:18-1 et seq., or as such regulations may be amended.

SECTION 2. STATEMENT OF FINDINGS.

A public hearing concerning the Municipal Consent herein granted to Cablevision was held after proper public notice pursuant to the terms and conditions of the Act. Said hearing having been held and fully open to the public, and the Township having received all comments regarding the qualifications of Cablevision to receive this Municipal Consent, the Township hereby finds Cablevision possesses the necessary legal, technical, character, financial and other qualifications to support Municipal Consent, and that Cablevision's operating and construction arrangements are adequate and feasible.

SECTION 3. GRANT OF AUTHORITY.

The Township hereby grants to Cablevision its non-exclusive Municipal Consent to place in, upon, along, across, above, over, and under its highways, streets, alleys, sidewalks, public ways, and public places in the Township poles, wires, cables, and fixtures necessary for the maintenance and operation within the Township of a cable television system, and for the provision of any communication service over the such system as may be authorized by Federal or State regulatory agencies. Operation and construction, pursuant to said Municipal Consent, is hereby conditioned upon prior approval of the Board of Public Utilities.

SECTION 4. DURATION OF FRANCHISE.

The Municipal Consent granted herein shall be non-exclusive and shall be for a term of ten (10) years from the date of issuance of a Certificate of Approval by the Board.

SECTION 5. EXPIRATION AND SUBSEQUENT RENEWAL.

If Cablevision seeks successive Municipal Consent, it shall, prior to the expiration of this Municipal Consent, apply for a Municipal Consent and Certificate of Approval in accordance with N.J.S.A 48:5A-16, and applicable State and Federal rules and regulations. Cablevision shall also petition the Board for approval authorizing continued operation during the period following expiration of the Municipal Consent

granted herein, and until such a time that a decision is made by the Township and the Board relative to the renewal of said Municipal Consent.

SECTION 6. FRANCHISE TERRITORY.

The Municipal Consent granted under this Ordinance to Cablevision shall apply to the entirety of the Township and any property hereafter annexed.

SECTION 7. SERVICE AREA.

Cablevision shall be required to proffer video programming service along any public right-of-way to any person's residence located in the Franchise territory at tariff rates for standard and nonstandard installation.

SECTION 8. LINE EXTENSION POLICY.

Cablevision shall be required to proffer service along any public right-of-way to any person's residence located in the franchise territory described herein, at tariffed rates for standard or non-standard installation. Cablevision shall proffer service to commercial customers consistent with the Line Extension Policy attached to its Application for Municipal Consent.

SECTION 9. FRANCHISE FEE.

Pursuant to the terms and conditions of the Cable Television Act, Cablevision shall pay to the Township, as an annual Franchise fee, a sum equal to two (2%) percent of the actual gross revenues received from all recurring charges in the nature of subscription fees paid by subscribers for its cable television reception services in the Township. In the event applicable law hereinafter permits a larger Franchise fee to be collected, but does not fix the amount thereof, the Township and Cablevision shall negotiate in good faith with respect to the amount thereof.

SECTION 10. FREE SERVICE.

Cablevision shall, upon written request, provide free of charge, one (1) standard installation and monthly cable television reception service to state and local accredited

elementary and secondary schools and all municipal public libraries, as well as municipal buildings located within the Township and used for governmental purposes.

Upon written request from the Township, Cablevision shall provide without charge basic cable modem service to state and local accredited elementary and secondary schools and municipal public libraries in the Township as follows: (1) one standard installation per school or library campus; (2) one cable modem per installation; and (3) cable modem service the term of this agreement for each installation, subject to the terms, conditions and use policies of the provider of the cable modem service as those policies may exist from time to time.

Upon written request from the Township, the Cablevision shall provide to Township Hall, without charge, the following: (1) one standard installation; (2) one cable modem; and (3) basic cable modem service for the term of this Ordinance. This offer shall be subject to the terms, conditions and use policies of Cablevision as those policies may exist from time to time.

SECTION 11. CONSTRUCTION/SYSTEM REQUIREMENTS.

Cablevision shall perform construction and installation of its plant and facilities in accordance with applicable State and Federal law. Cablevision shall be subject to the following additional construction requirements with respect to the installation of its plant and facilities in the Township:

A. In the event that Cablevision or its agents shall disturb any pavement, street surfaces, sidewalks, driveways or other surfaces, Cablevision shall, at its sole cost and expense restore and replace such disturbances in as good a condition as existed prior to the commencement of said work.

B. If at any time during the period of this Municipal Consent, the Township shall alter or change the grade of any street, alley or other way or place, Cablevision, upon reasonable notice by the Township, shall remove or relocate its equipment, at its sole cost and expense.

C. Upon request of a person holding a building or moving permit issued by the Township, Cablevision shall temporarily move or remove appropriate parts of its facilities so as to permit the moving or erection of buildings or for the

performance of other work. The expense of any such temporary removal or relocation shall be paid in advance to Cablevision by the person requesting the same. In such cases, Cablevision shall be given not less than fourteen (14) days prior written notice in order to arrange for the changes required.

D. During the exercise of its rights and privileges under this Municipal Consent, Cablevision shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the Township so as to prevent the branches of such trees from coming in contact with the wires, cables, conduits and fixtures of Cablevision. Such trimming shall be only to the extent necessary to maintain proper clearance for Cablevision's facilities.

SECTION 12. TECHNICAL AND CUSTOMER SERVICE STANDARDS.

Cablevision shall comply with the technical and customer service standards established for the cable industry under applicable Federal and State laws, rules and regulations.

SECTION 13. LOCAL OFFICE OR AGENT.

Cablevision shall establish and maintain during the entire term of this Municipal Consent a local area business office or agent for the purpose of receiving, investigating and resolving complaints regarding the quality of service, equipment malfunctions and similar matters. Said office shall be open daily during normal business hours, and in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday, with the exception of holidays.

SECTION 14. DESIGNATION OF COMPLAINT OFFICER.

The Office of Cable Television is hereby designated as the complaint officer for the Township pursuant to the provisions of N.J.S.A. 48:5A-26 All complaints shall be reviewed and processed in accordance with N.J.A.C. 14:17-6.5.

SECTION 15. LIABILITY INSURANCE.

Cablevision agrees to maintain and keep in force and effect at its sole cost and expense at all times during the term of this Municipal Consent, sufficient liability insurance naming the Township as an additional insured and insuring against any

losses, claims, suits, judgments, executions or demands in the minimum amounts of Five Hundred Thousand Dollars (\$500,000.00) for bodily injury or death to one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death resulting from any one accident or occurrence stemming from or arising out of Cablevision's exercise of its rights hereunder. Such liability insurance policies shall have a cancellation clause providing for thirty (30) days written notice of cancellation to the insured and any additional insureds.

SECTION 16. PERFORMANCE BOND.

Cablevision shall obtain and maintain, at its sole cost and expense, during the entire term of this Agreement, a bond to the Township in the amount of Twenty-Five Thousand Dollars (\$25,000.00) in a form to be reviewed and approved by the Township Attorney. Such bond shall be to insure the faithful performance of its obligations as provided in this Franchise.

SECTION 17. RATES.

A. Cablevision's rates for cable television services shall be subject to regulation to the extent permitted by Federal and State law.

B. Cablevision shall implement a senior citizen discount for low income senior citizens in the amount of ten percent (10%) off the monthly rate of the broadcast basic level of cable television reception service to any person sixty-two (62) years of age or older who subscribes to Cablevision's cable television service, subject to the following:

(i) Such low income senior discount shall only be available to eligible senior citizens who do not share the subscription with more than one person in the same household who is less than sixty-two (62) years of age; and,

(ii) In accordance with N.J.S.A. 48:5A-11.2, subscribers seeking eligibility for the low income senior discount must meet the income and residence requirements of the Pharmaceutical Assistance to the Aged and Disabled program pursuant to N.J.S.A. 30:4D-21; and,

(iii) The low income senior discount herein relates only to the broadcast basic level of cable television service, and shall not apply to any additional service, feature, or equipment offered by Cablevision, including any premium channel services and pay-per-view services; and,

(iv) Low income senior citizens who subscribe to a level of cable television service beyond expanded basic service, including any premium or per channel a la carte service, shall not be eligible for the low income senior citizen discount.

In the event that Cablevision shall be required to increase the Franchise fee in accordance with N.J.S.A. 48:5A-30(d), then at such time as the new fee is instituted, Cablevision shall no longer be obligated to maintain or offer the low income senior citizen discount specified in Section 16(B) above.

SECTION 18. EMERGENCY USES.

Cablevision shall be required to have the capability to override the audio portion of the system in order to permit the broadcasting of emergency messages by the Township pursuant to state and federal requirements. Cablevision shall in no way be held liable for any injury suffered by the Township or any other person, during an emergency, if for any reason the Township is unable to make full use of the cable television system as contemplated herein. The Township shall utilize the state-approved procedures for such emergency uses.

SECTION 19. EQUITABLE TERMS.

In the event that the service of another multi-channel video program provider not subject to the Township's regulatory authority within the Township creates a significant competitive disadvantage to Cablevision, Cablevision shall have the right to request from the Township lawful amendments to its Franchise that relieve it of burdens which create the unfair competitive situation. Should Cablevision seek such amendments to its Franchise, the parties agree to negotiate in good-faith appropriate changes to the Franchise in order to relieve Cablevision of such competitive disadvantages. If the parties can reach an agreement on such terms, the Township agrees to support Cablevision's petition to the Board for modification of the Municipal Consent in accordance with N.J.S.A 48:5A-47 and N.J.A.C. 14:17-6.7.

If the parties are unable to reach an agreement on appropriate amendments to the Franchise, the Township acknowledges that

Cablevision shall have the right to petition the Board directly for such amendments in accordance with N.J.S.A. 48:5A-47 and N.J.A.C. 14:17-6.7; provided, however, the Township shall be under no obligation to support Cablevision's request for such relief from the Board.

In any subsequent Municipal Consent, Township shall require, at a minimum, the same terms and conditions of any other provider of multi-channel video programming subject to the Township's regulatory authority as those contained in the present Municipal Consent. In the event such subsequent Municipal Consent does not contain the same terms and conditions as the present Municipal Consent, Township agrees to support Cablevision's petition to the Board for modification of the Municipal Consent in accordance with NJSA 48:5A-47 and NJAC 14:17-6.7 to relieve Cablevision of competitive disadvantages identified in Cablevision's petition.

SECTION 20. REMOVAL OF FACILITIES.

Upon expiration, termination or revocation of this Ordinance, Cablevision, at its sole cost and expense, and upon direction of the Board, shall remove the cables and appurtenant devices constructed or maintained in connection with the services authorized herein, unless Cablevision, its affiliated entities or assignees should, within six (6) months after such expiration, termination or revocation obtain certification from the FCC to operate an open video system or any other Federal or State certification to provide telecommunications.

SECTION 21. EDUCATIONAL AND GOVERNMENTAL ACCESS

A. Cablevision shall continue to make available non-commercial educational and governmental (EG) access as described in the Application for Municipal Consent.

B. The Township agrees that Cablevision shall retain the right to use the EG access channel, or portion thereof, for non-EG access programming, during times when the Township is not utilizing the channel for purposes of providing EG access programming. In the event that Cablevision uses said EG access channel for the presentation of such other programming, the EG programming shall remain the priority use and Cablevision's rights with respect to using the channel for non-EG programming shall be subordinate to the Township's provision of EG access programming on such channel.

C. In consideration for the rights granted in this Ordinance, Cablevision shall provide the Township with an initial grant in the

amount of Fifteen Thousand Dollars (\$15,000.00). Such amount shall be paid within sixty (60) days following the adoption of the consent ordinance and its acceptance by the Company, or within thirty (30) days of the grant of the Certificate from the Board, whichever comes first. In addition, beginning in the second year of the Municipal Consent and annually thereafter through the ten (10) year term of the Franchise, Cablevision shall, upon written request pay a grant to the Township in the amount of Five Thousand Five Hundred Fifty-Five Dollars and 55/100 (\$5,555.55) in each of the following years of the term of the Ordinance (the "Annual Grant"). The Annual Grant may be used by the Township for any cable and/or other telecommunications related purpose as the Township, in its discretion, may deem appropriate. Cablevision shall not be obligated to make any additional payments beyond year ten of the Franchise. The Annual Grant shall be payable to the Township within sixty (60) days from receipt of the Township's written request. Notwithstanding the foregoing, should Cablevision apply for a system-wide certification or otherwise convert its Municipal Consent to a system-wide certification in accordance with applicable law, it shall be relieved of any payments due and owing after the date of such conversion or award of a system-wide Franchise.

D. All EG access support provided by Cablevision shall be for the exclusive use of Cablevision's customers in the Township.

SECTION 22. INCORPORATION OF APPLICATION.

All of the commitments contained in the Application and any amendment thereto submitted in writing to the Township by Cablevision except as modified herein, are binding upon Cablevision as terms and conditions of this Municipal Consent. The Application and any other written amendments thereto submitted by Cablevision in connection with this Municipal Consent are incorporated in this Ordinance by reference and made a part hereof, except as specifically modified, changed, limited, or altered by this Ordinance, or to the extent that they conflict with State or Federal law.

SECTION 23. CONSISTENCY WITH APPLICABLE LAWS.

This Municipal Consent shall be construed in a manner consistent with all applicable Federal, State and local laws.

SECTION 24. SEPARABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

SECTION 25. EFFECTIVE DATE.

This Ordinance shall take effect upon issuance of a Certificate of Approval as issued by the Board of Public Utilities.

BE IT FURTHER ORDAINED that this Ordinance shall take effect upon the passage, and publication as required by law.

The following Resolution # 2008-392/Ord. # 2008-41 (Amend Section 84-104 - Stormwater Management) was introduced by reference, offered by Councilman LaRocca and seconded by Councilwoman Marder. Discussion following, during which Councilman LaRocca asked for further clarification, which was provided by Ron Gordon, Esq. and Township Engineer Ernest J. Peters, Jr.. After discussion, the resolution/ Ordinance was passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2008-392

BE IT RESOLVED by the Township Council of the Township of Marlboro that an Ordinance entitled:

ORDINANCE # 2008-41

AN ORDINANCE DELETING SECTION 84-104 "STORMWATER MANAGEMENT", ARTICLE VIII "SUBDIVISIONS: DESIGN AND PERFORMANCE STANDARDS", CHAPTER 84 "LAND USE DEVELOPMENT AND REGULATIONS" OF THE CODE OF THE TOWNSHIP OF MARLBORO AND ADOPTING NEW SECTIONS 84-104 THROUGH 84-104.12 CONCERNING STORMWATER MANAGEMENT

be introduced and passed on first reading and that the same be advertised according to law; and

BE IT FURTHER RESOLVED that the same be considered for final passage on December 18, 2008 at 8:00 p.m. at the Marlboro Municipal Complex, 1979 Township Drive, Marlboro, New Jersey, at which time all persons interested will be given an opportunity to be heard concerning said ordinance.

ORDINANCE # 2008-41

AN ORDINANCE DELETING SECTION 84-104 "STORMWATER MANAGEMENT", ARTICLE VIII "SUBDIVISIONS: DESIGN AND PERFORMANCE STANDARDS", CHAPTER 84 "LAND USE DEVELOPMENT AND REGULATIONS" OF THE CODE OF THE TOWNSHIP OF MARLBORO AND ADOPTING NEW SECTIONS 84-104 THROUGH 84-104.12 CONCERNING STORMWATER MANAGEMENT

WHEREAS, the Township of Marlboro, County of Monmouth, previously adopted stormwater management regulations to comply with the State's stormwater management regulations and it's Tier A Municipal Stormwater General Permit; and

WHEREAS, the Township Engineer has recommended the addition of provisions dealing with design and construction standards for stormwater collections systems, including construction standards for pipe, inlets, catch basins and manholes; and

WHEREAS, in order to implement these recommendations, the Township Attorney has recommended that Section 84-104 be re-numbered and re-codified in its entirety to facilitate the ease of use and understanding of these Stormwater Management regulations.

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED, by the Township Council of the Township of Marlboro, County of Monmouth and State of New Jersey that Section 84-104 "Stormwater Management" of Chapter 84 "Land Use Development and Regulations" of the Code of the Township of Marlboro be and hereby is deleted in its entirety; and

BE IT FURTHER ORDAINED, that a new Sections 84-104 through 84-104.12 be added to Chapter 84 "Land Use Development and Regulations" and shall read in their entirety as follows:

§ 84-104. Scope and Purpose.

A. Policy Statement

Flood control, groundwater recharge, and pollutant reduction through nonstructural or low impact techniques shall be explored before relying on structural BMPs. Structural BMPs should be integrated with nonstructural stormwater management strategies and proper maintenance plans. Nonstructural strategies include both

environmentally sensitive site design and source controls that prevent pollutants from being placed on the site or from being exposed to stormwater. Source control plans should be developed based upon physical site conditions and the origin, nature, and the anticipated quantity or amount of potential pollutants. Multiple stormwater management BMPs may be necessary to achieve the established performance standards for water quality, quantity, and groundwater recharge.

B. Purpose

It is the purpose of Sections 84-104 through 84-104.11 to establish minimum stormwater management requirements and controls for "major development," as defined in § 84-105.

C. Applicability

1. Sections 84-104 through 84-104.11 shall be applicable to all site plans and subdivisions for the following major developments that require preliminary or final site plan or subdivision review:
 - a. Non-residential major developments; and
 - b. Aspects of residential major developments that are not regulated by the Residential Site Improvement Standards at N.J.A.C. 5:21.
2. Sections 84-104 through 84-104.11 shall also be applicable to all major developments undertaken by Township of Marlboro.

D. Compatibility with Other Permit and Ordinance Requirements

Development approvals issued for subdivisions and site plans pursuant to this article are to be considered an integral part of development approvals under the subdivision and site plan review process and do not relieve the applicant of the responsibility to secure required permits or approvals for activities regulated by any other applicable code, rule, act, or ordinance. In their interpretation and application, the provisions of Sections 84-104 through 84-104.11 shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare. Sections 84-104 through 84-104.11 are not intended to interfere with or annul any other ordinances, rule or regulation, statute,

or other provision of law except that, where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, the more restrictive provisions or higher standards shall apply.

§ 84-104.1. Definitions.

Unless specifically defined below, words or phrases used in Sections 84-104 through 84-104.11 shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application. The definitions below are the same as or based on the corresponding definitions in the Stormwater Management Rules at N.J.A.C. 7:8-1.2.

"Agricultural development" means land uses normally associated with the production of food, fiber and livestock for sale. Such uses do not include the development of land for the processing or sale of food and the manufacturing of agriculturally related products.

"Compaction" means the increase in soil bulk density.

"Core" means a pedestrian-oriented area of commercial and civic uses serving the surrounding municipality, generally including housing and access to public transportation.

"County Review Agency" means an agency designated by the County Board of Chosen Freeholders to review the Township of Marlboro's stormwater management plans and implementing ordinance(s). The county review agency may either be:

A county planning agency; or

A county water resource association created under N.J.S.A 58:16A-55.5, if the ordinance or resolution delegates authority to approve, conditionally approve, or disapprove municipal stormwater management plans and implementing ordinances.

"Department" means the New Jersey Department of Environmental Protection.

"Design engineer" means a person professionally qualified and duly licensed in New Jersey to perform engineering services that may include, but not necessarily be limited to, development of project requirements, creation and development of project design and preparation of drawings and specifications.

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or structure, any mining excavation or landfill, and any use or change in the use

of any building or other structure, or land or extension of use of land, by any person, for which permission is required under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. In the case of development of agricultural lands, development means: any activity that requires a State permit; any activity reviewed by the County Agricultural Board (CAB) and the State Agricultural Development Committee (SADC), and municipal review of any activity not exempted by the Right to Farm Act , N.J.S.A 4:1C-1 et seq.

"Drainage area" means a geographic area within which stormwater, sediments, or dissolved materials drain to a particular receiving waterbody or to a particular point along a receiving waterbody. "Environmentally critical areas" means an area or feature which is of significant environmental value, including but not limited to: stream corridors; natural heritage priority sites; habitat of endangered or threatened species; large areas of contiguous open space or upland forest; steep slopes; and well head protection and groundwater recharge areas. Habitats of endangered or threatened species are identified using the Department's Landscape Project as approved by the Department's Endangered and Nongame Species Program.

"Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice or gravity.

"Flood Hazard Area" Area of potential risk due to sudden and temporary increase of surface water flow due to a storm event, typically, the 100-year storm.

"Impervious surface" means a surface that has been covered with a layer of material so that it is highly resistant to infiltration by water.

"Infiltration" is the process by which water seeps into the soil from precipitation.

"Major development" means any "development" that provides for ultimately disturbing one or more acres of land or results in a net increase of one-quarter (1/4) acre or more of impervious surface. Disturbance for the purpose of this rule is the placement of impervious surface or exposure and/or movement of soil or bedrock or clearing, cutting, or removing of vegetation.

"Mitigation" means an action by an applicant-providing compensation or offset actions for onsite stormwater management requirements where the applicant has demonstrated the inability or impracticability of strict compliance with the stormwater management requirements set forth in NJAC 7:8, in an adopted regional stormwater

management plan, or in this local ordinance, and has received a waiver from strict compliance from the municipality. Mitigation, for the purposes of this ordinance, includes both the mitigation plan, detailing how the projects applicants failure to strictly comply will be compensated, and the implementation of the approved mitigation plan within the same HUC-14 subwatershed within which the subject project is proposed (if possible and practical), or a contribution of funding toward a regional stormwater management plan, or provision for equivalent treatment at an alternative location, or other equivalent water quality benefit.

"Municipality" means Marlboro Township.

"Node" means an area designated by the State Planning Commission concentrating facilities and activities that are not organized in a compact form.

"Nutrient" means a chemical element or compound, such as nitrogen or phosphorus, which is essential to and promotes the development of organisms.

"Person" means any individual, corporation, company, partnership, firm, association, the Township of Marlboro or political subdivision of this State subject to municipal jurisdiction pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

"Pollutant" means any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, medical wastes, radioactive substance (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, agricultural, and construction waste or runoff, or other residue discharged directly or indirectly to the land, ground waters or surface waters of the State, or to a domestic treatment works. "Pollutant" shall include both hazardous and non-hazardous pollutants.

"Recharge" means the volume of water from precipitation that infiltrates into the ground and is not evapotranspired.

"Sediment" means solid material, mineral or organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water or gravity as a product of erosion.

"Site" means the lot or lots upon which a development is to occur or has occurred.

"Soil" means all unconsolidated mineral and organic material of any origin.

"Solid and floatable materials" means sediment, debris, trash, and other floating, suspended, or settleable solids.

"State Development and Redevelopment Plan Metropolitan Planning Area (PA1)" means an area delineated on the State Plan Policy Map and adopted by the State Planning Commission that is intended to be the focus for much of the state's future redevelopment and revitalization efforts.

"State Plan Policy Map" is defined as the geographic application of the State Development and Redevelopment Plan's goals and statewide policies, and the official map of these goals and policies.

"Stormwater" means water resulting from precipitation (including rain and snow) that runs off the land's surface, is transmitted to the subsurface, or is captured by separate storm sewers or other sewage or drainage facilities, or conveyed by snow removal equipment.

"Stormwater runoff" means water flow on the surface of the ground or in storm sewers, resulting from precipitation.

"Stormwater management basin" means an excavation or embankment and related areas designed to retain stormwater runoff. A stormwater management basin may either be normally dry (that is, a detention basin or infiltration basin), retain water in a permanent pool (a retention basin), or be planted mainly with wetland vegetation (most constructed stormwater wetlands).

"Stormwater management measure" means any structural or nonstructural strategy, practice, technology, process, program, or other method intended to control or reduce stormwater runoff and associated pollutants, or to induce or control the infiltration or groundwater recharge of stormwater or to eliminate illicit or illegal non-stormwater discharges into stormwater conveyances.

"Time of concentration" is defined as the time it takes for runoff to travel from the hydraulically most distant point of the watershed to the point of interest within a watershed;

"Total suspended solids" is the sum of dissolved and undissolved solids and particulate matter of a buoyancy and/or specific gravity that prohibits their settling in runoff.

"Waters of the State" means the ocean and its estuaries, all springs, streams, wetlands, and bodies of surface or ground water, whether natural or artificial, within the

boundaries of the State of New Jersey or subject to its jurisdiction.

"Wetlands" or "wetland" means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

§ 84-104.2. General Standards.

A. Design and Performance Standards for Stormwater Management Measures

1. Stormwater management measures for major development shall be developed to meet the erosion control, groundwater recharge, stormwater runoff quantity, and stormwater runoff quality standards in § 84-104.3 To the maximum extent practicable, these standards shall be met by incorporating nonstructural stormwater management strategies into the design. If these strategies alone are not sufficient to meet these standards, structural stormwater management measures necessary to meet these standards shall be incorporated into the design.
2. The standards in Sections 84-104 through 84-104.11 apply only to new major development and are intended to minimize the impact of stormwater runoff on water quality and water quantity in receiving water bodies and maintain groundwater recharge. The standards do not apply to new major development to the extent that alternative design and performance standards are applicable under a regional stormwater management plan or Water Quality Management Plan adopted in accordance with Department rules.

§ 84-104.3. Stormwater Management Requirements for Major Development.

- A. The development shall incorporate a maintenance plan for the stormwater management measures incorporated into the design of a major development in accordance with § 84-104.9.
- B. Stormwater management measures shall avoid adverse impacts of concentrated flow on habitat for threatened and endangered species as documented in the Department's Landscape Project or Natural Heritage Database established under N.J.S.A. 13:1B-15.147 through 15.104, particularly *Helonias bullata* (swamp pink) and/or *Clemmys muhlnebergi* (bog turtle).
- C. The following linear development projects are exempt from the groundwater recharge, stormwater runoff quantity, and

stormwater runoff quality requirements of § 84-104.3(F) and (G):

1. The construction of an underground utility line provided that the disturbed areas are revegetated upon completion;
 2. The construction of an aboveground utility line provided that the existing conditions are maintained to the maximum extent practicable; and
 3. The construction of a public pedestrian access, such as a sidewalk or trail with a maximum width of 14-feet, provided that the access is made of permeable material.
- D. A waiver from strict compliance from the groundwater recharge, stormwater runoff quantity, and stormwater runoff quality requirements of § 84-104.3(F) and (G) may be obtained for the enlargement of an existing public roadway; or the construction or enlargement of a public pedestrian access, provided that the following conditions are met:
1. The applicant demonstrates that there is a public need for the project that cannot be accomplished by any other means;
 2. The applicant demonstrates through an alternatives analysis, that through the use of nonstructural and structural stormwater management strategies and measures, the option selected complies with the requirements of § 84-104.3(F) and (G) to the maximum extent practicable;
 3. The applicant demonstrates that, in order to meet the requirements of § 84-104.3(F) and (G), existing structures currently in use, such as homes and buildings, would need to be condemned; and
 4. The applicant demonstrates that it does not own or have other rights to areas, including the potential to obtain through condemnation lands not falling under D.3 above within the upstream drainage area of the receiving stream, that would provide additional opportunities to mitigate the requirements of § 84-104.3(F) and (G) that were not achievable on-site.
- E. Nonstructural Stormwater Management Strategies
1. To the maximum extent practicable, the standards in § 84-104.3(F) and (G) shall be met by incorporating nonstructural stormwater management strategies set forth at § 84-104.3(E) into the design. The applicant shall identify the nonstructural measures incorporated into the design of the project. If the applicant contends that it is not feasible for engineering, environmental, or safety reasons to incorporate any nonstructural stormwater management measures identified in § 84-

104.3(E)(2) below into the design of a particular project, the applicant shall identify the strategy considered and provide a basis for the contention.

2. Nonstructural stormwater management strategies incorporated into site design shall:
 - a. Protect areas that provide water quality benefits or areas particularly susceptible to erosion and sediment loss;
 - b. Minimize impervious surfaces and break up or disconnect the flow of runoff over impervious surfaces;
 - c. Maximize the protection of natural drainage features and vegetation;
 - d. Minimize the decrease in the time of concentration from pre-construction to post construction.
 - e. Minimize land disturbance including clearing and grading;
 - f. Minimize soil compaction;
 - g. Provide low-maintenance landscaping that encourages retention and planting of native vegetation and minimizes the use of lawns, fertilizers and pesticides;
 - h. Provide vegetated open-channel conveyance systems discharging into and through stable vegetated areas;
 - i. Provide other source controls to prevent or minimize the use or exposure of pollutants at the site, in order to prevent or minimize the release of those pollutants into stormwater runoff. Such source controls include, but are not limited to:
 - (1) Site design features that help to prevent accumulation of trash and debris in drainage systems, including features that satisfy § 84-104.3(E)(3) below;
 - (2) Site design features that help to prevent discharge of trash and debris from drainage systems;
 - (3) Site design features that help to prevent and/or contain spills or other harmful accumulations of pollutants at industrial or commercial developments; and
 - (4) When establishing vegetation after land disturbance, applying fertilizer in accordance with the requirements established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., and implementing rules.

3. Site design features identified under § 84-04.3(E)(2)(i)(2) above shall comply with the following standard to control passage of solid and floatable materials through storm drain inlets. For exemptions to this standard see § 84-104.3(4)(E)(3)(c) below.
 - a. Design engineers shall use either of the following grates whenever they use a grate in pavement or another ground surface to collect stormwater from that surface into a storm drain or surface water body under that grate:
 - (1) The New Jersey Department of Transportation (NJDOT) bicycle safe grate, which is described in Chapter 2.4 of the NJDOT Bicycle Compatible Roadways and Bikeways Planning and Design Guidelines (April 1996); or
 - (2) A different grate, if each individual clear space in that grate has an area of no more than seven (7.0) square inches, or is no greater than 0.5 inches across the smallest dimension. Examples of grates subject to this standard include grates in grate inlets, the grate portion (non-curb-opening portion) of combination inlets, grates on storm sewer manholes, ditch grates, trench grates, and grates of spacer bars in slotted drains. Examples of ground surfaces include surfaces of roads (including bridges), driveways, parking areas, bikeways, plazas, sidewalks, lawns, fields, open channels, and stormwater basin floors.
 - b. Whenever design engineers use a curb-opening inlet, the clear space in that curb opening (or each individual clear space, if the curb opening has two or more clear spaces) shall have an area of no more than seven (7.0) square inches, or be no greater than two (2.0) inches across the smallest dimension.
 - c. This standard shall not apply under the following conditions or situations:
 - (1) Where the Township Engineer determines that this standard would cause inadequate hydraulic performance that could not practicably be overcome by using additional or larger storm drain inlets that meet these standards;
 - (2) Where flows from the water quality design storm as specified in § 84-104.3(G)(1) are conveyed through any device (e.g., end of pipe

netting facility, manufactured treatment device, or a catch basin hood) that is designed, at a minimum, to prevent delivery of all solid and floatable materials that could not pass through one of the following:

(a) A rectangular space four and five-eighths inches long and one and one-half inches wide (this option does not apply for outfall netting facilities); or

(b) A bar screen having a bar spacing of 0.5 inches.

(3) Where flows are conveyed through a trash rack that has parallel bars with one-inch (1") spacing between the bars, to the elevation of the water quality design storm as specified in § 84-104.3(G)(1); or

(4) Where the New Jersey Department of Environmental Protection determines, pursuant to the New Jersey Register of Historic Places Rules at N.J.A.C. 7:4-7.2(c), that action to meet this standard is an undertaking that constitutes an encroachment or will damage or destroy the New Jersey Register listed historic property.

4. Any land area used as a nonstructural stormwater management measure to meet the performance standards in § 84-104.3(G) and (F) shall be dedicated to a government agency, subjected to a conservation restriction filed with the Office of the Monmouth County Clerk, or subject to an approved equivalent restriction that ensures that measure or an equivalent stormwater management measure approved by the Township Engineer is maintained in perpetuity.

5. Guidance for nonstructural stormwater management strategies is available in the New Jersey Stormwater Best Management Practices Manual. The BMP Manual may be obtained from the address identified in § 84-104.6, or found on the Department's website at www.njstormwater.org.

F. Erosion Control, Groundwater Recharge and Runoff Quantity Standards

1. This subsection contains minimum design and performance standards to control erosion, encourage and control infiltration and groundwater recharge, and control stormwater runoff quantity impacts of major development.

a. The minimum design and performance standards for erosion control are those established under the

Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. and implementing rules.

- b. The minimum design and performance standards for groundwater recharge are as follows:
 - (1) The design engineer shall, using the assumptions and factors for stormwater runoff and groundwater recharge calculations at § 84-104.4, either:
 - (a) Demonstrate through hydrologic and hydraulic analysis that the site and its stormwater management measures maintain 100 percent of the average annual pre-construction groundwater recharge volume for the site; or
 - (b) Demonstrate through hydrologic and hydraulic analysis that the increase of stormwater runoff volume from pre-construction to post-construction for the 2-year storm is infiltrated.
 - (2) This groundwater recharge requirement does not apply to projects within the "urban redevelopment area," or to projects subject to (3) below.
 - (3) The following types of stormwater shall not be recharged:
 - (a) Stormwater from areas of high pollutant loading. High pollutant loading areas are areas in industrial and commercial developments where solvents and/or petroleum products are loaded/unloaded, stored, or applied, areas where pesticides are loaded/unloaded or stored; areas where hazardous materials are expected to be present in greater than "reportable quantities" as defined by the United States Environmental Protection Agency (EPA) at 40 CFR 302.4; areas where recharge would be inconsistent with Department approved remedial action work plan or landfill closure plan and areas with high risks for spills of toxic materials, such as gas stations and vehicle maintenance facilities; and
 - (b) Industrial stormwater exposed to "source material." "Source material" means any material(s) or machinery, located at an industrial facility, that is directly or

indirectly related to process, manufacturing or other industrial activities, which could be a source of pollutants in any industrial stormwater discharge to groundwater. Source materials include, but are not limited to, raw materials; intermediate products; final products; waste materials; by-products; industrial machinery and fuels, and lubricants, solvents, and detergents that are related to process, manufacturing, or other industrial activities that are exposed to stormwater.

(4) The design engineer shall assess the hydraulic impact on the groundwater table and design the site so as to avoid adverse hydraulic impacts. Potential adverse hydraulic impacts include, but are not limited to, exacerbating a naturally or seasonally high water table so as to cause surficial ponding, flooding of basements, or interference with the proper operation of subsurface sewage disposal systems and other subsurface structures in the vicinity or down gradient of the groundwater recharge area.

c. In order to control stormwater runoff quantity impacts, the design engineer shall, using the assumptions and factors for stormwater runoff calculations at § 84-104.4, complete one of the following:

(1) Demonstrate through hydrologic and hydraulic analysis that for stormwater leaving the site, post-construction runoff hydrographs for the two, 10, and 100-year storm events do not exceed, at any point in time, the pre-construction runoff hydrographs for the same storm events;

(2) Demonstrate through hydrologic and hydraulic analysis that there is no increase, as compared to the pre-construction condition, in the peak runoff rates of stormwater leaving the site for the two, 10, and 100-year storm events and that the increased volume or change in timing of stormwater runoff will not increase flood damage at or downstream of the site. This analysis shall include the analysis of impacts of existing land uses and projected land uses

assuming full development under existing zoning and land use ordinances in the drainage area;

- (3) Design stormwater management measures so that the post-construction peak runoff rates for the 2, 10 and 100 year storm events are 04, 75 and 80 percent, respectively, of the preconstruction peak runoff rates. The percentages apply only to the post-construction stormwater runoff that is attributable to the portion of the site on which the proposed development or project is to be constructed. The percentages shall not be applied to post-construction stormwater runoff into tidal flood hazard areas if the increased volume of stormwater runoff will not increase flood damages below the point of discharge; or
2. Any application for a new agricultural development that meets the definition of major development at § 84-104.1 shall be submitted to the Freehold Soils Conservation District (FSCD) for review and approval in accordance with the requirements of this section and any applicable FSCD guidelines for stormwater runoff quantity and erosion control.

G. Stormwater Runoff Quality Standards

1. Stormwater management measures shall be designed to reduce the post-construction load of total suspended solids (TSS) in stormwater runoff by 80 percent of the anticipated load from the developed site, expressed as an annual average. Stormwater management measures shall only be required for water quality control if an additional 1/4-acre of impervious surface is being proposed on a development site. The requirement to reduce TSS does not apply to any stormwater runoff in a discharge regulated under a numeric effluent limitation for TSS imposed under the New Jersey Pollution Discharge Elimination System (NJPDES) rules, N.J.A.C. 7:14A, or in a discharge specifically exempt under a NJPDES permit from this requirement. The water quality design storm is 1.25 inches of rainfall in two hours. Water quality calculations shall take into account the distribution of rain from the water quality design storm, as reflected in Table 1. The calculation of the volume of runoff may take into account the implementation of non-structural and structural stormwater management measures.

Table 1: Water Quality Design Storm Distribution

Time Cumulative (Minutes)	Cumulative Rainfall (Inches)	Time Cumulative Rainfall (Minutes)	Time Cumulative Rainfall (Inches)
0	0.0000	65	0.8917
5	0.0083	70	0.9917
10	0.0166	75	1.0040
15	0.0204	80	1.0840
20	0.0040	85	1.1170
25	0.0704	90	1.1040
30	0.1000	95	1.1704
35	0.1330	100	1.2000
40	0.1660	105	1.2204
45	0.2000	110	1.2334
04	0.2583	115	1.2417
55	0.3583	120	1.2040
60	0.6204		

2. For purposes of TSS reduction calculations, Table 2 below presents the presumed removal rates for certain BMPs designed in accordance with the New Jersey Stormwater Best Management Practices Manual. The BMP Manual may be obtained from the address identified in § 84-104.6, or found on the Department's website at www.njstormwater.org. The BMP Manual and other sources of technical guidance are listed in § 84-104.6. TSS reduction shall be calculated based on the removal rates for the BMPs in Table 2 below. Alternative removal rates and methods of calculating removal rates may be used if the design engineer provides documentation demonstrating the capability of these alternative rates and methods to the review agency.
3. If more than one BMP in series is necessary to achieve the required 80 percent TSS reduction for a site, the applicant shall utilize the following formula to calculate TSS reduction:

$$R = A + B - (AB)/100$$

Where

R = total TSS percent load removal from application of both BMPs, and

A = the TSS percent removal rate applicable to the first BMP

B = the TSS percent removal rate applicable to the second BMP

Table 2: TSS Removal Rates for BMPs

Best Management Practice Rate	TSS Percent Removal (Percent)
<i>Bioretention Systems</i>	90
<i>Constructed Stormwater Wetland</i>	90
<i>Extended Detention Basin</i>	40-60
<i>Infiltration Structure</i>	80
<i>Manufactured Treatment Device</i>	See Section 6.C
<i>Sand Filter</i>	80
<i>Vegetative Filter Strip</i>	60-80
<i>Wet Pond</i>	04-90

4. If there is more than one onsite drainage area, the 80 percent TSS removal rate shall apply to each drainage area, unless the runoff from the subareas converge on site in which case the removal rate can be demonstrated through a calculation using a weighted average.
5. Stormwater management measures shall also be designed to reduce, to the maximum extent feasible, the post-construction nutrient load of the anticipated load from the developed site in stormwater runoff generated from the water quality design storm. In achieving reduction of nutrients to the maximum extent feasible, the design of the site shall include nonstructural strategies and structural measures that optimize nutrient removal while still achieving the performance standards in § 84-104.6(F) and (G).
6. In accordance with the definition of FW1 at N.J.A.C. 7:9B-1.4, stormwater management measures shall be designed to prevent any increase in stormwater runoff to waters classified as FW1.
7. Special water resource protection areas have been established along all waters designated Category One at N.J.A.C. 7:9B, and perennial or intermittent streams that drain into or upstream of the Category One waters as shown on the USGS Quadrangle Maps or in the County Soil Surveys, within the associated HUC14 drainage area.

These areas shall have been established for the protection of water quality, aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, and exceptional fisheries significance of those established Category One waters. These areas shall be designated and protected as follows:

- a. The applicant shall preserve and maintain a special water resource protection area in accordance with one of the following:
 - (1) A 300-foot special water resource protection area shall be provided on each side of the waterway, measured perpendicular to the waterway from the top of the bank outwards or from the centerline of the waterway where the bank is not defined, consisting of existing vegetation or vegetation allowed to follow natural succession.
 - (2) Encroachment within the designated special water resource protection area under Subsection (1) above shall only be allowed where previous development or disturbance has occurred (for example, active agricultural use, parking area or maintained lawn area). The encroachment shall only be allowed where applicant demonstrates that the functional value and overall condition of the special water resource protection area will be maintained to the maximum extent practicable. In no case shall the remaining special water resource protection area be reduced to less than 104 feet as measured perpendicular to the top of bank of the waterway or centerline of the waterway where the bank is undefined. All encroachments proposed under this subparagraph shall be subject to review and approval by the Department.
- b. All stormwater shall be discharged outside of and flow through the special water resource protection area and shall comply with the Standard for Off-Site Stability in the "Standards For Soil Erosion and Sediment Control in New Jersey," established under the Soil Erosion and Sediment Control Act , N.J.S.A. 4:24-39 et seq.
- c. If stormwater discharged outside of and flowing through the special water resource protection area cannot comply with the Standard For Off-Site

Stability in the "Standards for Soil Erosion and Sediment Control in New Jersey," established under the Soil Erosion and Sediment Control Act , N.J.S.A. 4:24-39 et seq., then the stabilization measures in accordance with the requirements of the above standards may be placed within the special water resource protection area, provided that:

- (1) Stabilization measures shall not be placed within 104 feet of the Category One waterway;
 - (2) Stormwater associated with discharges allowed by this section shall achieve a 95 percent TSS post-construction removal rate;
 - (3) Temperature shall be addressed to ensure no impact on the receiving waterway;
 - (4) The encroachment shall only be allowed where the applicant demonstrates that the functional value and overall condition of the special water resource protection area will be maintained to the maximum extent practicable;
 - (5) A conceptual project design meeting shall be held with the appropriate Department staff and Soil Conservation District staff to identify necessary stabilization measures; and
 - (6) All encroachments proposed under this section shall be reviewed and approved by the New Jersey Department of Environmental Protection prior to approval by the review agency
- d. Paragraph G.8 does not apply to the construction of one individual single family dwelling that is not part of a larger development on a lot receiving preliminary or final subdivision approval on or before February 2, 2004, provided that the construction begins on or before February 2, 2009.

§ 84-104.4. Calculation of Stormwater Runoff and Groundwater Recharge.

A. Stormwater runoff shall be calculated in accordance with the following:

1. The design engineer shall calculate runoff using one of the following methods:
 - a. The USDA Natural Resources Conservation Service (NRCS) methodology, including the NRCS Runoff Equation and Dimensionless Unit Hydrograph, as described in the NRCS National Engineering Handbook Section 4 - Hydrology and Technical Release 55 - Urban Hydrology for Small Watersheds; or

- b. The Rational Method for peak flow and the Modified Rational Method for hydrograph computations.
 2. For the purpose of calculating runoff coefficients and groundwater recharge, there is a presumption that the pre-construction condition of a site or portion thereof is a wooded land use with good hydrologic condition. The term "runoff coefficient" applies to both the NRCS methodology at § 84-104.4(A)(1)(a) and the Rational and Modified Rational Methods at § 84-104.4(A)(1)(b). A runoff coefficient or a groundwater recharge land cover for an existing condition may be used on all or a portion of the site if the design engineer verifies that the hydrologic condition has existed on the site or portion of the site for at least five years without interruption prior to the time of application. If more than one land cover have existed on the site during the five years immediately prior to the time of application, the land cover with the lowest runoff potential shall be used for the computations. In addition, there is the presumption that the site is in good hydrologic condition (if the land use type is pasture, lawn, or park), with good cover (if the land use type is woods), or with good hydrologic condition and conservation treatment (if the land use type is cultivation).
 3. In computing pre-construction stormwater runoff, the design engineer shall account for all significant land features and structures, such as ponds, wetlands, depressions, hedgerows, or culverts, that may reduce pre-construction stormwater runoff rates and volumes.
 4. In computing stormwater runoff from all design storms, the design engineer shall consider the relative stormwater runoff rates and/or volumes of pervious and impervious surfaces separately to accurately compute the rates and volume of stormwater runoff from the site. To calculate runoff from unconnected impervious cover, urban impervious area modifications as described in the NRCS Technical Release 55 - Urban Hydrology for Small Watersheds and other methods may be employed.
 5. If the invert of the outlet structure of a stormwater management measure is below the flood hazard design flood elevation as defined at N.J.A.C. 7:13, the design engineer shall take into account the effects of tailwater in the design of structural stormwater management measures.
- B. Groundwater recharge may be calculated in accordance with the following:

1. The New Jersey Geological Survey Report GSR-32 A Method for Evaluating Ground-Water Recharge Areas in New Jersey, incorporated herein by reference as amended and supplemented. Information regarding the methodology is available from the New Jersey Stormwater Best Management Practices Manual; at;

<http://www.state.nj.us/dep/njgs/>; or at
New Jersey Geological Survey, 29 Arctic Parkway
P.O. Box 427 Trenton, New Jersey 08625-0427.

- C. Designs of stormwater conduit systems shall utilize the Sandy Hook, 25-year, Rainfall.

§ 84-104.5 Standards for Structural Stormwater Management Measures.

- A. Standards for structural stormwater management measures are as follows:

1. Structural stormwater management measures shall be designed to take into account the existing site conditions, including, for example, environmentally critical areas, wetlands; flood-prone areas; slopes; depth to seasonal high water table; soil type, permeability and texture; drainage area and drainage patterns; and the presence of solution-prone carbonate rocks (limestone).
2. Structural stormwater management measures shall be designed to minimize maintenance, facilitate maintenance and repairs, and ensure proper functioning. Trash racks shall be installed at the intake to the outlet structure as appropriate, and shall have parallel bars with one-inch (1") spacing between the bars to the elevation of the water quality design storm. For elevations higher than the water quality design storm, the parallel bars at the outlet structure shall be spaced no greater than one-third (1/3) the width of the diameter of the orifice or one-third (1/3) the width of the weir, with a minimum spacing between bars of one-inch and a maximum spacing between bars of six inches. In addition, the design of trash racks must comply with the requirements of § 84-104.7(D).
3. Structural stormwater management measures shall be designed, constructed, and installed to be strong, durable, and corrosion resistant. Measures that are consistent with the relevant portions of the Residential Site Improvement Standards at N.J.A.C. 5:21-7.3, 7.4, and 7.5 shall be deemed to meet this requirement.
4. At the intake to the outlet from the stormwater management basin, the orifice size shall be a minimum of two and one-half inches in diameter.

5. Stormwater management basins shall be designed to meet the minimum safety standards for stormwater management basins at § 84-104.7.
- B. Stormwater management measure guidelines are available in the New Jersey Stormwater Best Management Practices Manual. Other stormwater management measures may be utilized provided the design engineer demonstrates that the proposed measure and its design will accomplish the required water quantity, groundwater recharge and water quality design and performance standards established by § 84-104.3.
- C. Manufactured treatment devices may be used to meet the requirements of § 84-104.3, provided the pollutant removal rates are verified by the New Jersey Corporation for Advanced Technology and certified by the Department.
- D. Standards for Stormwater Collection Systems
1. Velocities in closed conduits at design flow shall be at least two feet per second but not more than 10 feet per second.
 2. No pipe size in the storm drainage system shall be less than 15 inches in diameter.
 3. All discharge pipes shall terminate with a precast concrete flared end section or a cast-in-place concrete headwall with or without wingwalls as conditions dictate.
 4. The spacing of inlets shall be such that surface water shall not flow for more than 500 feet or the quantity of water is such that it causes ponding of water deeper than two inches at Type B and Type E inlets, whichever is the lesser distance. If due to the slope of the approach prior to the inlet, 80% of the stormwater does not enter the inlet, decreased spacing and depth of water permissible shall be required. Sufficient inlets will be placed to eliminate any flow exceeding two cubic feet per second across any roadway intersection or pedestrian crosswalk.
 5. Dished gutters shall be permitted at any street intersection on rural and local streets and at the intersection of rural and local streets with minor collector streets and at the intersection of minor collector streets with major collector streets where the street of the lower classification is to be officially designated and signed as a stop street. In such cases, the dished gutter shall cross only the street of the lower classification. At the intersections of primary and secondary arterial streets and major collector streets, sufficient catch basins, at the discretion of the reviewing agency, shall be installed at each street intersection to avoid gutter overflow and at low

points in the street grade, and dished gutters shall not be permitted.

6. Manhole spacing shall increase with pipe size. The maximum spacing shall be 500 feet for 15 to 18 inches; 600 feet for 21 to 36 inches; and 700 feet for 42 inches and greater.

84-104.6 Construction Standards for pipe.

A. Storm Sewer

1. Materials used in the construction of storm sewers shall be constructed of reinforced concrete, ductile iron, corrugated aluminum or corrugated steel unless site and other conditions dictate otherwise. Reinforced converted pipe shall be used unless the applicant can demonstrate that the use of other materials will be more beneficial due to the proposed installation. Cost will not be a consideration in this analysis. Specifications referred to, such as American Standards Association, American Society for Testing and Materials, American Water Works Association, etc., should be the latest revision.

2. Reinforced concrete pipe.

- a. Circular reinforced concrete pipe and fittings shall meet the requirements of ASTM C-76.
- b. Elliptical reinforced concrete pipe shall meet the requirements of ASTM C-507.
- c. Joint design and joint material for circular pipe shall conform to ASTM C-443.
- d. Joints for elliptical pipe shall be bell and spigot or tongue and groove, sealed with butyl, rubber tape or external sealing bands conforming to ASTM C-877.
- e. All pipe shall be Class III unless a stronger pipe (i.e., higher class) is indicated to be necessary.
- f. The minimum depth of cover over the concrete pipe shall be as designated by the American Concrete Pipe Association.

3. Ductile iron pipe. Ductile iron pipe shall be centrifugally cast in metal or sand-lined molds to ANSI A21.51-1976 (AWWA C151-76). The joints shall conform to AWWA C111. Pipe shall be furnished with flanges where connections to flange fittings are required. Pipe should be Class 50 (minimum). The outside of the pipe should be coated with a uniform thickness of hot-applied coal tar coating and the inside lined cement in accordance with AWWA C104. Ductile iron pipe shall be installed with Class C ordinary bedding.

4. Corrugated aluminum pipe. Within the public right-of-way and where severe topographic conditions or the desire to minimize the destruction of trees and vegetation exist, corrugated aluminum pipe, pipe arch or helical corrugated pipe may be used. The material shall comply with the Standard Specifications for Corrugated Aluminum Alloy Culvert and Under Drain AASHTO destination M196 or the Standard Specification for Aluminum Alloy Helical Pipe AASHTO Designation M-211. The minimum thickness of the aluminum pipe to be used shall be:

- a. Less than twenty-four-inch diameter or equivalent, seventy-five thousandths (0.075) inch (14-gauge).
- b. Twenty-four-inch diameter and less than forty-eight-inch diameter or equivalent, one hundred five thousandths (0.105) inch (12-gauge).
- c. Forty-eight-inch but less than seventy-two-inch diameter or equivalent, one hundred thirty-five thousandths (0.135) inch (10-gauge).
- d. Seventy-two-inch diameter or equivalent and larger, one hundred sixty-four thousandths (0.164) inch (8-gauge).

5. Corrugated steel pipe. Corrugated steel pipe may be used in place of corrugated aluminum and shall meet the requirements of AASHTO Specification M36. Coupling bands and special sections shall also conform to AASHTO M-36. All corrugated steel pipe shall be bituminous coated in accordance with AASHTO M-190, Type A minimum.

6. Pipe bedding shall be provided as specified in Design and Construction of Sanitary and Storm Sewers, ASCE Manuals and Reports on Engineering Practice Number 37, prepared by A Joint Committee of the Society of Civil Engineers and the Water Pollution Control Federation, New York, 1969.

B. Inlets, Catch Basins and Manholes

1. Inlets, catch basins and manholes shall be designed in accordance with State Highway Department Standard Plans and Specifications. Frames shall be Campbell Foundry Company Pattern Number 2541, 2548, with eight-inch curb face, and 3432, 3440, for Type E inlets, or approved equal. All grates to be bicycle grates.
2. Manholes and catch basins shall be precast concrete, brick or concrete block, coated with two coats of portland cement mortar.

3. If precast manhole barrels and cones are used, they shall conform to ASTM Specification C-473 with round rubber gasketed joints, conforming to ASTM Specification C-923. Maximum absorption shall be 8% in accordance with ASTM Specification C-478, Method A.
4. If precast manholes are utilized, the top riser section shall terminate less than one foot below the finished grade and the manhole cover shall be flush with the finished grade.
5. Manhole frames and covers shall be of cast iron conforming to ASTM Specification A-48 Class 30 and be suitable for H-20 loading capacity. All manhole covers in rights-of-way or in remote areas shall be provided with a locking device. The letters "Year 19 ____" and the words "STORM SEWER" shall be cast integrally in the cover.

C. Principal Outlet Structures

1. Outlet structures should be designed to facilitate outlet operation and maintenance as the water level rises and to permit clearing either during or after a storm. Structural support members, steps, rungs or ladders should be provided to allow easy escape opportunities for a child or an adult without having these support members, ladders, etc., impede the clearing of trash from the outlet structure or the upward movement of trash as the water level rises.
2. The use of thin metal plates for trash rack bars, hand hold supports, sharp crested weirs or orifices are prohibited because of the potential for accidents. Wire mesh fabric is similarly prohibited due to its poor suitability for trash clearance.
3. Any outlet protective facility should have lockable hinged connections providing adequate access to thoroughly clean the area enclosed by the structure and to facilitate removal of accumulated debris and sediment around the outlet structure.
4. All outlet structures shall be structurally sound and shall be designed to withstand, without failure or permanent deformation, all structural loads, hydrostatic, dynamic or otherwise, which impact upon it during the design life of the installation. They shall be maintenance free to the maximum extent possible.

§ 84-104.7. Sources for Technical Guidance

- A. Technical guidance for stormwater management measures can be found in the documents listed at 1 and 2 below, which are available from Maps and Publications, New Jersey

Department of Environmental Protection, 428 East State Street, P.O. Box 420, Trenton, New Jersey, 08625; telephone (609) 777-1038.

1. Guidelines for stormwater management measures are contained in the New Jersey Stormwater Best Management Practices Manual, as amended. Information is provided on stormwater management measures such as: bioretention systems, constructed stormwater wetlands, dry wells, extended detention basins, infiltration structures, manufactured treatment devices, pervious paving, sand filters, vegetative filter strips, and wet ponds.
 - a. The New Jersey Department of Environmental Protection Stormwater Management Facilities Maintenance Manual, as amended.
 - b. Additional technical guidance for stormwater management measures can be obtained from the following:
 1. The "Standards for Soil Erosion and Sediment Control in New Jersey" promulgated by the State Soil Conservation Committee and incorporated into N.J.A.C. 2:90. Copies of these standards may be obtained by contacting the State Soil Conservation Committee or any of the Soil Conservation Districts listed in N.J.A.C. 2:90-1.3(a)4. The location, address, and telephone number of each Soil Conservation District may be obtained from the State Soil Conservation Committee, P.O. Box 330, Trenton, New Jersey 08625; (609) 292-5540;
 2. The Rutgers Cooperative Extension Service, 732-932-9306; and
 3. The Soil Conservation Districts listed in N.J.A.C. 2:90-1.3(a)4. The location, address, and telephone number of each Soil Conservation District may be obtained from the State Soil Conservation Committee, P.O. Box 330, Trenton, New Jersey, 08625, (609) 292-5540.

§ 84-104.8 Safety Standards for Stormwater Management Basins.

- A. This section sets forth requirements to protect public safety through the proper design and operation of stormwater management basins. This section applies to any new stormwater management basin.

The provisions of this section are not intended to preempt more stringent municipal or county safety requirements for new or existing stormwater management basins. Marlboro Township and Monmouth County stormwater management plans and ordinances may, pursuant to their authority, require existing stormwater management basins to be retrofitted to

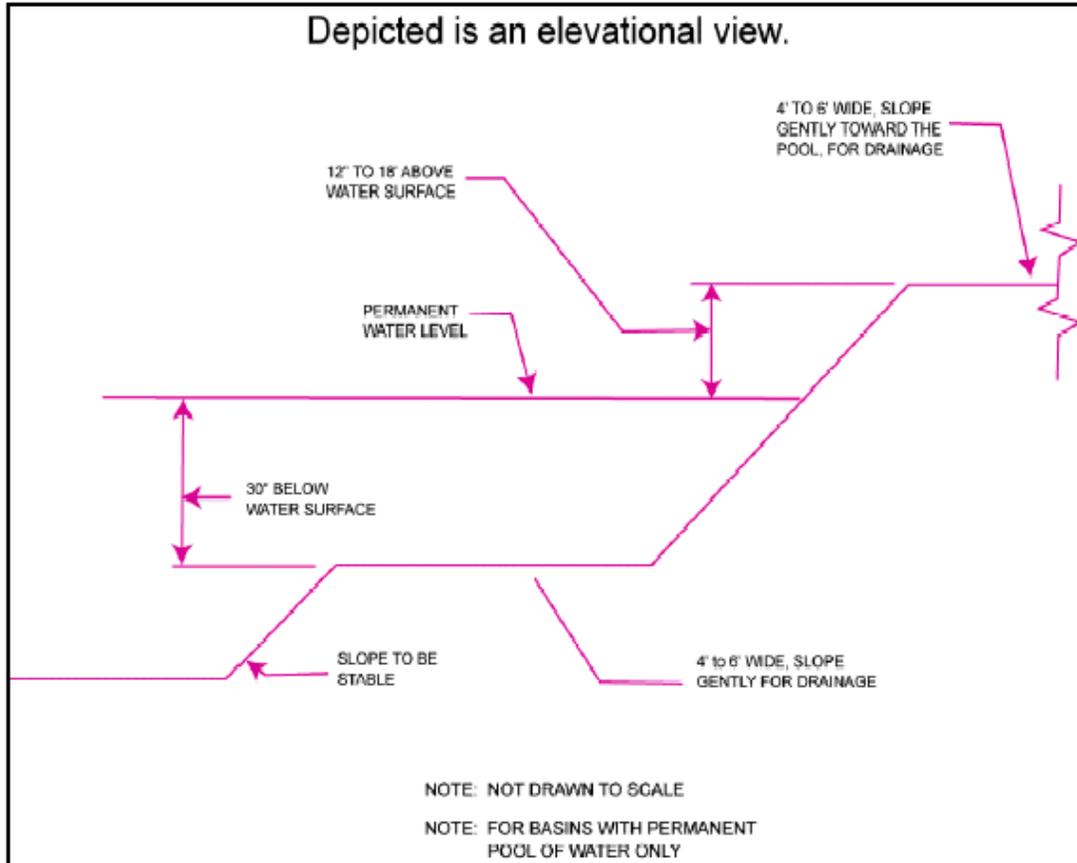
meet one or more of the safety standards in § 84-104.7(B)(1), (2) and (3) for trash racks, overflow grates, and escape provisions at outlet structures.

B. Requirements for Trash Racks, Overflow Grates and Escape Provisions

1. A trash rack is a device designed to catch trash and debris and prevent the clogging of outlet structures. Trash racks shall be installed at the intake to the outlet from the stormwater management basin to ensure proper functioning of the basin outlets in accordance with the following:
 - a. The trash rack shall have parallel bars, with no greater than six inch spacing between the bars.
 - b. The trash rack shall be designed so as not to adversely affect the hydraulic performance of the outlet pipe or structure.
 - c. The average velocity of flow through a clean trash rack is not to exceed 2.5 feet per second under the full range of stage and discharge. Velocity is to be computed on the basis of the net area of opening through the rack.
 - d. The trash rack shall be constructed and installed to be rigid, durable, and corrosion resistant, and shall be designed to withstand a perpendicular live loading of 300 lbs/ft sq.
2. An overflow grate is designed to prevent obstruction of the overflow structure. If an outlet structure has an overflow grate, such grate shall meet the following requirements:
 - a. The overflow grate shall be secured to the outlet structure but removable for emergencies and maintenance.
 - b. The overflow grate spacing shall be no less than two inches across the smallest dimension.
 - c. The overflow grate shall be constructed and installed to be rigid, durable, and corrosion resistant, and shall be designed to withstand a perpendicular live loading of 300 lbs./ft sq.
3. For purposes of this paragraph 3, escape provisions means the permanent installation of ladders, steps, rungs, or other features that provide easily accessible means of egress from stormwater management basins. Stormwater management basins shall include escape provisions as follows:
 - a. If a stormwater management basin has an outlet structure, escape provisions shall be incorporated in or on the structure. With the prior approval of

the reviewing agency identified in § 84-104.7(C) a freestanding outlet structure may be exempted from this requirement.

- b. Safety ledges shall be constructed on the slopes of all new stormwater management basins having a permanent pool of water deeper than two and one-half feet. Such safety ledges shall be comprised of two steps. Each step shall be four to six feet in width. One step shall be located approximately two and one-half feet below the permanent water surface, and the second step shall be located one to one and one-half feet above the permanent water surface. See § 84-104.7(D) for an illustration of safety ledges in a stormwater management basin.
 - c. In new stormwater management basins, the maximum interior slope for an earthen dam, embankment, or berm shall not be steeper than 3 horizontal to 1 vertical.
- C. Variance or Exemption from Safety Standards. A variance or exemption from the safety standards for stormwater management basins may be granted only upon a written finding by the appropriate reviewing agency, The Township of Marlboro, the County of Monmouth or the Department, that the variance or exemption will not constitute a threat to public safety.
- D. Illustration of Safety Ledges in a New Stormwater Management Basin



§ 84-104.9 Requirements for a Site Development Stormwater Plan.

A. Submission of Site Development Stormwater Plan

1. Whenever an applicant seeks municipal approval of a development subject to Sections 84-104 through 84-104.11, the applicant shall submit all of the required components of the Checklist for the Site Development Stormwater Plan at § 84-104.8(C) below as part of the submission of the applicant's application for subdivision or site plan approval.
2. The applicant shall demonstrate that the project meets the standards set forth in this ordinance.
3. The applicant shall submit [specify number] copies of the materials listed in the checklist for site development stormwater plans in accordance with § 84-104.8(C).

- B. Site Development Stormwater Plan Approval - The applicant's Site Development project shall be reviewed as a part of the subdivision or site plan review process by the municipal board or official from which municipal

approval is sought. That municipal board or official shall consult the engineer retained by the Planning and/or Zoning Board (as appropriate) to determine if all of the checklist requirements have been satisfied and to determine if the project meets the standards set forth in this ordinance.

C. Checklist Requirements - The following information shall be required:

1. Topographic Base Map

The Township Engineer may require upstream tributary drainage system information as necessary. It is recommended that the topographic base map of the site be submitted which extends a minimum of 200 feet beyond the limits of the proposed development, at a scale of 1"=200' or greater, showing 2-foot contour intervals. The map as appropriate may indicate the following: existing surface water drainage, shorelines, steep slopes, soils, erodible soils, perennial or intermittent streams that drain into or upstream of the Category One waters, wetlands and flood plains along with their appropriate buffer strips, marshlands and other wetlands, pervious or vegetative surfaces, existing man-made structures, roads, bearing and distances of property lines, and significant natural and manmade features not otherwise shown.

2. Environmental Site Analysis

- A written and graphic description of the natural and man-made features of the site and its environs. This description should include a discussion of soil conditions, slopes, wetlands, waterways and vegetation on the site. Particular attention should be given to unique, unusual, or environmentally sensitive features and to those that provide particular opportunities or constraints for development.

3. Project Description and Site Plan(s)

- A map (or maps) at the scale of the topographical base map indicating the location of existing and proposed buildings, roads, parking areas, utilities, structural facilities for stormwater management and sediment control, and other permanent structures. The map(s) shall also clearly show areas where alterations occur in the natural terrain and cover, including lawns and other landscaping, and seasonal high ground water elevations. A written description of the site plan and justification of proposed changes in natural conditions may also be provided.

4. Land Use Planning and Source Control Plan
 - This plan shall provide a demonstration of how the goals and standards of Sections 84-104.2 through 84-104.5 are being met. The focus of this plan shall be to describe how the site is being developed to meet the objective of controlling groundwater recharge, stormwater quality and stormwater quantity problems at the source by land management and source controls whenever possible.
5. Stormwater Management Facilities Map - The following information, illustrated on a map of the same scale as the topographic base map, shall be included:
 - a. Total area to be paved or built upon, proposed surface contours, land area to be occupied by the stormwater management facilities and the type of vegetation thereon, and details of the proposed plan to control and dispose of stormwater.
 - b. Details of all stormwater management facility designs, during and after construction, including discharge provisions, discharge capacity for each outlet at different levels of detention and emergency spillway provisions with maximum discharge capacity of each spillway.
6. Calculations
 - a. Comprehensive hydrologic and hydraulic design calculations for the pre-development and postdevelopment conditions for the design storms specified in § 84-104.3.
 - b. When the proposed stormwater management control measures (e.g., infiltration basins) depend on the hydrologic properties of soils, then a soils report shall be submitted. The soils report shall be based on onsite boring logs or soil pit profiles. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soils present at the location of the control measure.
7. Maintenance and Repair Plan - The design and planning of the stormwater management facility shall meet the maintenance requirements of § 84-104.9.
8. Waiver from Submission Requirements - The Township Engineer or, if applicable, Board Engineer in consultation with the Township Engineer, may waive submission of any of the requirements in § 84-104.8(C)(1) through (C)(6) when it can be demonstrated that the information requested is impossible to obtain

or it would create a hardship on the applicant to obtain and its absence will not materially affect the review process.

§ 84-104.10 Maintenance and Repair.

A. Applicability

1. Projects subject to review as in § 84-104(C) shall comply with the requirements of § 84-104.9(B) and (C).

B. General Maintenance

1. The design engineer shall prepare a maintenance plan for the stormwater management measures incorporated into the design of a major development.
2. The maintenance plan shall contain specific preventative maintenance tasks and schedules; cost estimates, including estimated cost of sediment, debris, or trash removal; and the name, address, and telephone number of the person or persons responsible for preventative and corrective maintenance (including replacement). Maintenance guidelines for stormwater management measures are available in the New Jersey Stormwater Best Management Practices Manual. If the maintenance plan identifies a person other than the developer (for example, a public agency or homeowners' association) as having the responsibility for maintenance, the plan shall include documentation of such person's agreement to assume this responsibility, or of the developer's obligation to dedicate a stormwater management facility to such person under an applicable ordinance or regulation.
3. Responsibility for maintenance shall not be assigned or transferred to the Township in a residential development or project. Responsibility for facilities located in commercial or industrial development sites shall be the owner of the site. A named individual shall be responsible for the safety and maintenance of said facility. The posting of a two year maintenance guarantee in accordance with N.J.S.A. 40:55D-53 shall be required for all facilities not dedicated to the Township or other public agency.
4. If the person responsible for maintenance identified under § 84-104.9(B)(2) above is not a public agency, the maintenance plan and any future revisions based on § 84-104.9(B)(7) below shall be recorded upon the deed of record for each property on which the maintenance described in the maintenance plan must be undertaken.

5. Preventative and corrective maintenance shall be performed to maintain the function of the stormwater management measure, including repairs or replacement to the structure; removal of sediment, debris, or trash; restoration of eroded areas; snow and ice removal; fence repair or replacement; restoration of vegetation; and repair or replacement of nonvegetated linings.
 6. The person responsible for maintenance identified under § 84-104.9(B)(2) above shall maintain a detailed log of all preventative and corrective maintenance for the structural stormwater management measures incorporated into the design of the development, including a record of all inspections and copies of all maintenance-related work orders. This log shall be made available for inspection at the request of the Township, County, or the Department.
 7. The person responsible for maintenance identified under § 84-104.9(B)(2) above shall evaluate the effectiveness of the maintenance plan at least once per year and adjust the plan and the deed as needed.
 8. The person responsible for maintenance identified under § 84-104.9(B)(2) above shall retain and make available, upon request by any public entity with administrative, health, environmental, or safety authority over the site, the maintenance plan and the documentation required by Sections 84-104.9(B)(6) and (B)(7) above.
 9. The requirements of Sections 84-104.9(B)(3) and (B)(4) do not apply to stormwater management facilities that are dedicated to and accepted by the municipality or another governmental agency.
 10. In the event that the stormwater management facility becomes a danger to public safety or public health, or if it is in need of maintenance or repair, the municipality shall so notify the responsible person in writing. Upon receipt of that notice, the responsible person shall have fourteen (14) days to effect maintenance and repair of the facility in a manner that is approved by the municipal engineer or his designee. The municipality, in its discretion, may extend the time allowed for effecting maintenance and repair for good cause. If the responsible person fails or refuses to perform such maintenance and repair, the municipality or County may immediately proceed to do so and shall bill the cost thereof to the responsible person.
- B. Nothing in this section shall preclude the municipality in which the major development is located from requiring the

posting of a performance or maintenance guarantee in accordance with N.J.S.A. 40:55D-53.

§ 84-104.11 Penalties.

Any person who erects, constructs, alters, repairs, converts, maintains, or uses any building, structure or land in violation of Sections 84-104 through 84-104.11 shall be subject to the following penalties:

Failure to comply with any provisions of this Section shall be considered a violation of the Coded Ordinances of the Township of Marlboro and shall be punishable by a fine of one thousand dollars (\$1,000.00) or ninety (90) days in jail, or both. Each day of such violations continuance shall be considered as a separate offence and shall be separately punishable. These penalties shall not be in the exclusive remedy available, and nothing in this article shall prevent an applicant from obtaining injunctive relief.

§ 84-104.12 Mitigation Plan.

A. Standards

1. For the purposes of this Section, "Mitigation" shall incorporate the definition set forth in Section 84-104.1 and shall include situations where the applicant has demonstrated the inability or impracticality of strict compliance with the stormwater management requirements set forth in N.J.A.C 7:8 in addition to the requirements set forth in this ordinance.
2. The Board having jurisdiction over an application requiring a stormwater management plan shall have the jurisdiction to grant a waiver from strict compliance with the performance requirements of this ordinance or the Stormwater Management Plan. The waiver may be granted where an applicant has demonstrated the inability or impracticality of strict compliance with this article and/or the Stormwater Management Plan upon the following conditions. The applicant must demonstrate one of the following:
 - (a) An inability to apply any of the Best Management Practices and methodologies as defined and approved herein and in the Stormwater Management Plan, due to an extraordinary and exceptional situation uniquely affecting the subject property or structures thereon, resulting in a peculiar and exceptional practical difficulty or undue hardship; or
 - (b) That the purposes of Sections 84-104 through 84-104.11 and Stormwater Management Plan can be

advanced by a deviation from the Best Management Practices and methodologies as defined and approved herein and in the Stormwater Management Plan, where the benefits of such deviation substantially outweigh any detriment.

3. In requesting a waiver as to any application, the applicant may submit as reasons for the waiver the site conditions of the proposed project, including soils types; thin soil cover; low permeability soils, and/or shallow depths to groundwater (high groundwater levels), unique conditions which would create an unsafe design, or conditions which would provide a detrimental impact to public health, welfare, or safety.
4. The waiver cannot be granted due to conditions created by the applicant. If the applicant can comply with the requirements of Sections 84-104 through 84-104.11 and Stormwater Management Plan through reducing the size of a project, the hardship is self imposed, and therefore the Board lacks jurisdiction to grant any waiver under this section.
5. The applicant must propose a suitable mitigation method through the submission of a mitigation plan which will conform as closely as possible to the design and performance standards of this ordinance, through structural or non-structural stormwater management measures, governing stormwater quality, quantity, and ground water recharge. approval of a waiver or exemption from any one of the three stormwater design standard criteria which include groundwater recharge, water quality, and water quantity provides no guarantee that, if requested, an exemption or waiver will be granted for either or both of the remaining criteria.
6. Supporting evidence for an exemption or waiver shall be prepared in the form of a "stormwater management report" which will be signed and sealed by a New Jersey licensed professional engineer. The report shall include at a minimum:
 - (a) Detailed hydrologic and hydraulic calculations identifying the sizing criteria for each BMP and the stormwater collection system based upon the anticipated peak flow and/or volume.
 - (b) A map of the planned project showing existing conditions with drainage boundaries and land features, including delineated wetlands, proposed improvements, including all BMPs, grading, utilities, impervious features, and landscaping.

(c) Construction details for each BMP with appropriate contact information.

B. Mitigation Criteria.

The mitigation requirements listed below offer a hierarchy of options that are intended to offset the effect on groundwater recharge, stormwater quantity control, and/or stormwater quality control to an equal or greater extent than was created by the granting of a waiver or exemption from the stormwater management requirements. The mitigation criteria are listed below in order of preference:

1. Identify, design, and implement a compensating measure to mitigate impacts- The preferred option is to identify and develop a compensating mitigation project in the same drainage area as the proposed development. In these cases, the applicant will address the same issue within the design and performance standards for which the variance or exemption is being sought, and demonstrate that the proposed mitigating measures provide equal or greater compensation to offset the non-complying aspect of the stormwater management system on site. The developer must also ensure the long-term maintenance of the project as outlined in Chapters 8 and 9 of the NJDEP Stormwater BMP Manual. If the Township agrees to control a new stormwater management facility, arrangement in the form of an escrow account will be made to stipulate the payment amount, schedule, and long term responsibilities of the facility to ensure that it functions to capacity.
2. Complete a project identified by the municipality as equivalent to the environmental impact created by the exemption or variance- If a suitable site cannot be located in the same drainage area as the proposed development, as discussed in Option 1, the mitigation project may provide measures that are not directly equivalent to the impacts for which the variance or exemption is being sought, but that addresses the same issue to an equal or greater extent. For example if a variance is given because the 80% TSS requirement has not been met, the selected project may address water quality impacts that increase the siltation of a waterbody within the applicable HUC 14 subwatershed.

If these criteria cannot be met on-site, the Township has identified the retrofitting of existing basins as the primary mode for mitigation measures to follow. Through clearing sediment, expanding capacity, or bringing the

basin into compliance with water quality standards, mitigation opportunities have the potential to significantly improve stormwater management issues that face Marlboro Township.

As many of the developments in Marlboro were constructed with curb and gutter drainage, stormwater is often funneled and released directly into an adjoining waterbody. As these methods are contrary to the stormwater management BMP's outlined in the NJDEP's BMP Manual and endorsed through the adoption of the State's new stormwater regulations, the retrofitting of these basins can dramatically improve the Township's existing stormwater management infrastructure. Mitigation projects can utilize a number of BMP's to offset the stormwater management of a project that is unable to comply with the new design standards. However, these BMP's, which may include sand filters, vegetative filters, or the incorporation of a manufactured treatment device, among other possibilities, will be engineered and applied on a site-by-site basis. In general, the engineering necessary to determine the mitigative measure that is most suited for a particular basin is the responsibility of the applicant, and must be determined and submitted by the applicant along with the particular projects site plan.

Marlboro has identified locations within the Deep Run watershed where BMP's can be utilized to improve stormwater management and reduce flooding. These locations, which have been identified by catchment area, offer developers specific options such as improving culverts, or upgrading infrastructure to use as mitigative alternatives. Applicants that are seeking waivers for development proposals located within the Deep Run watershed are strongly encouraged to reference the ten Subwatershed Impact Assessment and Implementation Project Summary Tables that are included within the, Identification And Evaluation of Impairments Within the Deep Run Watershed Report. Copies of the aforementioned report are available at the Township Clerk's office.

3. Provide funding for municipal projects that would address existing stormwater impacts- The third and least preferable stormwater mitigation option is for the applicant to provide funding or partial funding for an environmental enhancement project that has been identified in the Municipal Stormwater Management Plan, or towards

the development of a Regional Stormwater Management Plan. The contributed funds must be equal or greater than the cost to implement the required on-site stormwater measure for which relief is requested including the cost of land, easements, engineering design, and long-term maintenance. However, with this option Marlboro Township, not the applicant is ultimately responsible for the design, property acquisition, construction, construction management, maintenance (short term and long term) and follow-up study, unless that project and its prospective costs have been outlined within this Mitigation Plan.

An applicant may also propose a mitigation project on a site that has not been identified in this mitigation plan. However, in each circumstance the selection of a mitigation project must incorporate the following requirements:

- (a) The project must be within the same area that would contribute to the receptor impacted by that project. If there is no specific sensitive receptor impacted, then the location of the mitigation project may be located anywhere within the municipality, preferably at a location that would provide the greatest benefit.
- (b) Legal authorization must be obtained to construct the project at the location selected. This includes the maintenance and any access needs for the project throughout its operation.
- (c) The mitigation project should be located close to the original development project. If possible, the mitigation project should be located at a similar distance from the identified sensitive receptor. This distance should not be based on actual location, but on a similar hydraulic distance to the sensitive receptor. For example, if a project for which a waiver is obtained discharges to a tributary, but the closest location discharges to the main branch of a waterway, it may be more beneficial to identify a location discharging to the same tributary.
- (d) It is preferable to have one location that addresses any and all of the performance standards waived, rather than one location for each performance standard.
- (e) The project location must demonstrate no adverse

- impacts to other properties.
- (f) For projects addressing the groundwater recharge performance standard, a mitigation project site upstream of the location of the actual project site is preferable to a downstream location.
 - (g) Mitigation projects that address stormwater runoff quantity can choose to provide storage for proposed increases in runoff volume, as opposed to a direct peak flow reduction.
 - (h) Mitigation projects that address stormwater runoff quality can choose to address another pollutant other than TSS, which has been demonstrated to be of particular concern, such as streams that have been listed as an impaired waterbody for other pollutants. However, care must be taken to ensure that waivers that are granted for the TSS requirements do not result in the impairment of an existing unimpaired area.

C. Requirements for Mitigation Projects

1. Whether the applicant is proposing the mitigation project, or Marlboro has identified the project within this Mitigation Plan, the following requirements for mitigation must be included in the project submission.

- (a) Impact from noncompliance- The applicant must provide a table to show the required values, and the values provided in the project, and include an alternatives analysis that demonstrates that on-site compliance was maximized to the greatest extent practicable.
- (b) Narrative and Supporting Information Regarding the Need for the Waiver- The waiver cannot be granted for a condition that was created by the applicant. If the applicant can provide compliance with the stormwater rules through a reduction in the scope of the project, the applicant has created the condition and a waiver cannot be issued. The applicant must provide a discussion and supporting information of the site conditions that would not allow the construction of a stormwater management facility to provide compliance with these requirements, and/or if the denial of the application would

impose an extraordinary hardship on the applicant brought about by circumstances peculiar to the subject property. The site conditions to be considered are soil type, the presence of karst geology, acid soils, a high groundwater table, unique conditions that would create an unsafe design, as well as conditions that may provide a detrimental impact to public health, welfare, and safety.

- (c) Sensitive Receptor- Identify the sensitive receptor related to the performance standard for which a waiver is sought. Demonstrate that the mitigation site contributes to the same sensitive receptor.
- (d) Design of the Mitigation Project- Provide the design details of the mitigation project. This includes, but is not limited to, drawings, calculations, and other information needed to evaluate the mitigation project.
- (e) Responsible Party- The mitigation project submission must list the party or parties responsible for the construction or maintenance of the mitigation project. Documentation must be provided to demonstrate that the responsible party is aware of, has authority to perform, and accepts the responsibility for the construction and the maintenance of the mitigation project. Under no circumstances shall the responsible party be an individual single-family homeowner.
- (f) Maintenance- The applicant must include a maintenance plan that addresses the maintenance criteria at N.J.A.C. 7:8-5 as part of a mitigation plan. In addition, if the maintenance responsibility is being transferred to Marlboro Township, or another entity, the entity responsible for the cost of the maintenance must be identified. Marlboro provides applicants with the option of conveying the mitigation project to the Township, provided that the applicant funds the cost of maintenance of the facility in perpetuity.

- (g) Permits- The applicant is solely responsible to obtain any and all necessary local, State, or other applicable permits for the identified mitigation project or measure. The applicable permits must be obtained prior to the municipal approval of the project for which the mitigation is being sought.
- (h) Construction- The applicant must demonstrate that the construction of the mitigation project coincides with the construction of the proposed project. A certificate of occupancy or final approval by the municipality for the application permit cannot be issued until the mitigation project or measure receives final approval. Any mitigation projects proposed by the municipality to offset the stormwater impacts of the Township's own projects must be completed within six months of the completion of the municipal project, in order to remain in compliance with Marlboro's NJPDES General Permit.

2. In all instances the Board having jurisdiction over the application shall have the power to impose additional conditions as may be appropriate under the circumstances of the application. The Board shall make specific findings of fact and conclusions consistent with Section 104 showing the inability or impracticality of strict compliance with the Ordinance and Stormwater Management Plan and (2) justifying the approval of the applicant's mitigation plan, in order to satisfy the reporting requirements of the municipality's NJPDES permit and other applicable state law requiring the submission of reports to any state or county review agency. The Board shall also have the power to require mitigation as to applications, which have received waivers from the New Jersey Department of Environmental Protection.

BE IT FURTHER ORDAINED, that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provisions so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective.

BE IT FURTHER ORDAINED, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon passage, publication and approval by the county review agency in accordance with applicable law.

The following Resolution # 2008-393/Ord. # Ord. # 2008-42 (Deleting Article IX - Stormwater Management Sections 84-150 through 84-161) was introduced by reference, offered Councilman LaRocca, seconded by Council Vice President Rosenthal and passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2008-393

BE IT RESOLVED by the Township Council of the Township of Marlboro that an Ordinance entitled:

ORDINANCE # 2008-42

AN ORDINANCE DELETING ARTICLE IX "STORMWATER MANAGEMENT", SECTIONS 84-150 THROUGH 84-161 WITHIN CHAPTER 84 "LAND USE DEVELOPMENT" OF THE CODE OF THE TOWNSHIP OF MARLBORO IN ITS ENTIRETY AND RESERVING SUCH ARTICLE IX FOR FUTURE USE

be introduced and passed on first reading and that the same be advertised according to law; and

BE IT FURTHER RESOLVED that the same be considered for final passage on December 18, 2008 at 8:00 p.m. at the Marlboro Municipal Complex, 1979 Township Drive, Marlboro, New Jersey, at which time all persons interested will be given an opportunity to be heard concerning said ordinance.

ORDINANCE # 2008-42

AN ORDINANCE DELETING ARTICLE IX "STORMWATER MANAGEMENT", SECTIONS 84-150 THROUGH 84-161 WITHIN CHAPTER 84 "LAND USE DEVELOPMENT" OF THE CODE OF THE TOWNSHIP OF MARLBORO IN ITS ENTIRETY AND RESERVING SUCH ARTICLE IX FOR FUTURE USE

WHEREAS, due to revisions of the Code of the Township of Marlboro, in Chapter 84, "Land Use Development", Article VIII "Subdivisions: Design and Performance Standards", Sections 84-104

through 84-104.12, the previously adopted Article IX "Stormwater Management", Sections 84-150 through 84-161 have become outdated and redundant, and it is desirable to delete such Article IX containing Sections 84-150 through 84-161 in its entirety from the Code of the Township of Marlboro and to reserve such Article IX for future use.

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED, by the Township Council of the Township of Marlboro, County of Monmouth and State of New Jersey that Article IX, "Stormwater Management", Sections 84-150 through 84-161, within Chapter 84, "Land Use Development" of the Code of the Township of Marlboro be and is hereby deleted in its entirety; and

BE IT FURTHER ORDAINED, that such Article IX within Chapter 84, "Land use Development" is hereby reserved for future use.

BE IT FURTHER ORDAINED, that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provisions so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective.

BE IT FURTHER ORDAINED, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon passage, publication and approval by the county review agency in accordance with applicable law.

The following Res. # 2008-394 (Change Meeting Date Dec. 11 to Dec. 18, 2008) was introduced by reference, offered by Councilwoman Marder and seconded by Councilman LaRocca and passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2008-394

BE IT RESOLVED by the Township Council of the Township of Marlboro that the rescheduled Council Meeting of December 11, 2008 be changed to December 18, 2008 at the usual time and place, 8 PM, Town Hall, 1979 Township Drive, Marlboro, New Jersey.

The following Res. # 2008-395 (Bond Reduction A+ Public Warehouse B. 360.02, L. 12&13) was introduced by reference, offered by Councilman LaRocca and seconded by Council Vice President Rosenthal and passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2008-395

RESOLUTION AUTHORIZING REDUCTION OF PERFORMANCE
GUARANTEES HELD BY THE TOWNSHIP OF MARLBORO
FOR THE DEVELOPMENT KNOWN AS A+ PRODUCTS

WHEREAS, in accordance with *N.J.S.A. 40:55D-53*, the Township of Marlboro has received a request from A+ Warehousing, LLC and MCS Realty Holding, LLC (hereinafter collectively referred to as "Developer") for the reduction of Township held Performance Guarantees in the form of Bonds and Cash for site improvements at a development known as A+ Products on the property known as Block 360.02, Lots 12 and 13 on the Official Tax Map of the Township of Marlboro, Monmouth County, New Jersey; and

WHEREAS, the Mayor and Township Council of the Township of Marlboro have received and reviewed a report from the Township Engineer dated November 14, 2008, a copy of which is attached hereto and made a part hereof; and

WHEREAS, the aforesaid report recommends a partial reduction in the current Performance Guarantee amounts for Bonds and Cash being held by the Township; and

WHEREAS, the Township Council desires to reduce the Performance Guarantee amounts for Bonds and Cash in accordance with the recommendations of the Township Engineer.

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED, by the Township Council of the Township of Marlboro, County of Monmouth, State of New Jersey, that the Performance Guarantee amounts in the form of Bonds and Cash posted for the Development known as A+ Products shall be reduced as follows:

The Performance Guarantee Letter of Credit issued by First Washington State Bank, No. 06-006, dated September 21, 2006) for site improvements in the original and present amount of \$548,562.65, shall

be reduced by \$383,987.56, so that the amount to remain shall be \$164,566.10; and

The Cash Bond, in the original and present amount of \$60,950.41, shall be reduced by \$42,665.28, so that the amount to remain shall be \$18,285.12.

BE IT FURTHER RESOLVED, that the above reductions shall be subject to the payment of all fees required by the Planning Board and/or Developer's Agreement for the aforesaid development.

BE IT FURTHER RESOLVED, that a certified copy of this Resolution shall be provided to each of the following:

- a. A+ Warehousing, LLC and
MCS Realty Holding, LLC Chelsea Commons, LLC
- b. Washington State Bank
- c. Township Engineer
- d. Township Administrator
- e. DeCotiis, FitzPatrick, Cole & Wisler, LLP

The following Res. # 2008-396 (Bond Release Highland Crest - B. 193, L. 53) was introduced by reference, offered by Council Vice President Rosenthal and seconded by Council President Cantor. Discussion followed, during which Kenneth Pape, Esq., representing the developer, and Township Engineer Ernest Peters answered Council Vice President Rosenthal's questions. After discussion, the resolution was passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2008-396

RESOLUTION AUTHORIZING RELEASE OF PERFORMANCE GUARANTEES
FOR HIGHLAND CREST, BLOCK 193, LOT 53, MARLBORO, NEW JERSEY

WHEREAS, in accordance with *N.J.S.A. 40:55D-53*, the Township of Marlboro has received a request for the release of Township held Performance Guarantees for Site Improvements for the Development known as Highland Crest, Block 193, Lot 53, Marlboro, New Jersey posted by Highland Crest, Inc., Sam Halpern, Arie Halpern, and Marvin Schmelzer as to the Performance Bond and Haim Binstock as to the Cash payment (collectively, "Developer"); and

WHEREAS, the Mayor and Township Council of the Township of Marlboro have received and reviewed a report from the Township Engineer dated November 26, 2008, a copy of which is attached hereto and made a part hereof; and

WHEREAS, the report recommends that the current Performance Guarantees in the amount of \$117,788.00, of which \$106,009.00 has been posted as a Performance Bond and \$11,779.00 has been posted as Cash, and which amounts are being held by the Township, may be released in their entirety subject to Developer paying all outstanding inspection fee charges to the time of the performance guarantee release, plus the posting of a two-year fifteen percent (15%) maintenance bond in the amount of \$49,078.33; and

WHEREAS, the Township Council now wishes to take the following action regarding the aforesaid Performance Guarantees, Bond and Cash.

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED by the Township Council of the Township of Marlboro, County of Monmouth, State of New Jersey, that the above-described Performance Guarantees posted by Developer for the site improvements at the Highland Crest Development, Block 193, Lot 53, Marlboro, New Jersey, shall be released in their entirety; and

BE IT FURTHER RESOLVED, that the release of the Performance Guarantees is conditioned upon Developer's payment of all outstanding inspection fee charges to the time of the performance guarantee release, plus the posting of a two-year fifteen percent (15%) maintenance bond in the amount of \$49,078.33; and

BE IT FURTHER RESOLVED, that a certified copy of this Resolution shall be provided to each of the following:

- a. Highland Crest, Inc., Sam Halpern, Arie Halpern, and Marvin Schmelzer and Haim Binstock
- b. First Indemnity of America Insurance Co.
- c. Mayor Hornik
- d. Township Business Administrator
- e. Township Engineers
- f. Chief Financial Officer
- g. DeCotiis, FitzPatrick, Cole & Wisler, LLP

The following Res. # 2008-397 (Declaring items surplus for On Line Auction and authorizing third party Agreement with GovDeals for on-line auctions) was introduced by reference, offered by Council Vice President Rosenthal and seconded by Councilwoman Marder and passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2008-397

A RESOLUTION AUTHORIZING THE SALE OF SURPLUS
MUNICIPAL PERSONAL PROPERTY NOT NEEDED FOR
PUBLIC USE BY PUBLIC ON-LINE AUCTION

WHEREAS, pursuant to N.J.S.A. 40A:11-36, a municipality may, by resolution, authorize the sale of its personal property not needed for public use; and

WHEREAS, the Department of Community Affairs, Division of Local Government Services ("DCA") has issued Local Finance Notice 2008-9 ("LFN-2008-9") which permits a municipality to sell its personal property not needed for public use on-line; and

WHEREAS, LFN-2008-9 sets forth procedural guidelines regarding the use of a on-line public auction for the sale of such municipal personal property not needed for public use; and

WHEREAS, the Mayor and Township Council of the Township of Marlboro deem that it is in the best interests of the Township of Marlboro to sell the Township's personal property not needed for public use using the on-line auction process set forth in LFN-2008-9; and

WHEREAS, govdeals.com is one of the internet based vendors approved by the DCA to carry out on-line auctions of municipal property not needed for public use.

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED, by the Township Council of the Township of Marlboro, County of Monmouth, State of New Jersey that:

1. The Township hereby determines that its personal property described on Exhibit "A" attached hereto and made a part hereof and entitled "Surplus Property of the Township of Marlboro" and dated, December 3, 2008 is personal property no longer needed for public use by the Township of Marlboro; and

2. The Township further determines that such surplus personal property listed on Exhibit "A" shall be sold by auction on-line by govdeals.com; and
3. The sale of such surplus property listed on Exhibit "A" shall be conducted pursuant to the procedures set forth in Local Finance Notice 2008-9; and
4. The terms and conditions of the Agreement between the Township of Marlboro and govdeals.com are available for public viewing at the website of govdeals.com and on file in the Clerk's Office of the Township of Marlboro; and
5. The Mayor or Business Administrator and Township Clerk are hereby authorized to execute and witness, respectively, the On-Line Auction Agreement and any other documents required to effectuate the sale of the Township's surplus personal property described in Exhibit "A"; and
6. The Township Clerk shall, pursuant to the terms of N.J.S.A. 40A:11-36, publish a legal newspaper advertisement informing the public as to the nature of the surplus property being sold and how to obtain more information, and which states the date, time and place of the public sale, together with a description of the items to be sold and the conditions of sale in the official newspaper of the Township of Marlboro as follows:

- a. An announcement of the auction and that the item(s) shall be sold on-line;
- b. the internet address for the sale being advertised;
- c. the date and time of the auction and a general description of the surplus personal property intended to be sold, however specific information for particular items, such as the VIN number for vehicles, is not required; and
- d. a statement that bidders must pre-register with the approved vendor and the internet address with registration information.

7. Pursuant to N.J.S.A. 40A:11-36, sales shall be held not less than seven (7) nor more than fourteen (14) days after the latest publication of the advertisement.

BE IT FURTHER RESOLVED, that a certified copy of this Resolution shall be provided to each of the following:

- a. govdeals.com
- b. Mayor Jonathan Hornik
- c. Business Administrator
- d. Chief Financial Officer
- e. DeCotiis, FitzPatrick, Cole & Wisler, LLP
- f. Division of Local Government Services,
Department of Community Affairs

EXHIBIT "A"

Vehicle	Vin #	Current Miles	Condition
2003 Ford Interceptor	2FAHP71W93X154521	92025	Poor
2003 Ford Interceptor	2FAHP71W73X200637	109721	Poor
1990 GMC 3500	1GDJC34K6LE535250	152315	Poor
	Equipment		
Asphalt Distributor	Purchased 5-10-1988		Obsolete
Hot Mix Transporter	Purchased 4-9-1990		Obsolete
1 Lot	Various Computer Equip		Obsolete-Poor
12 Stihl	Weedwackers		For Parts to Fair
2 Black&Decker	Hedge Trimmers		Poor-Fair
Cyclone Spreader	Windmill 1310		Poor-Fair
Power Trim	Edger 3.5 hp motor		Poor-Fair
1993 Kelly Cresswell	2000as Line Striper		Obsolete-Poor
Minolta Camera	Freedom Zoom		Obsolete
Olympus Camera	Infinity Zoom230		Obsolete
Trailer Food Court	Recreation		Obsolete
Trailer Old Pool	Office Recreation		Obsolete
Printer Rec	Rizograph #RA4200		Obsolete

The following Res. # 2008-398 (Transfers) was introduced by reference, offered by Council Vice President Rosenthal and seconded by Councilwoman Marder and passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2008-398

RESOLUTION AUTHORIZING BUDGET TRANSFERS
DURING LAST TWO MONTHS OF THE FISCAL YEAR

WHEREAS, N.J.S.A. 40A: 4-58 provides for appropriation transfers during the last two (2) months of the fiscal year, when it has been determined that it is necessary to expend for any of the purposes specified in the budget an amount in excess of the sum appropriated therefore and where it has been further determined that there is an excess in any appropriation over the above the amount deemed to be necessary to fulfill the purpose of such appropriation,

NOW, THEREFORE BE IT RESOLVED, by the Township Council of the Township of Marlboro does hereby authorize the transfers among the Calendar Year 2008 Municipal Budget as follow:

From:

Police S&W	75,000.00
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To:

Police OE	75,000.00
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Totals	75,000.00	75,000.00
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The following Res. # 2008-399 (Authorizing Purchase on State Contract - Zetron Integrator RD Dispatch Console) was introduced by reference, offered by Council Vice President Rosenthal and seconded by Councilwoman Tragni and passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2008-399

A RESOLUTION AUTHORIZING THE PURCHASE OF A ZETRON INTEGRATOR RD DISPATCH CONSOLE FOR THE MARLBORO TOWNSHIP POLICE DEPARTMENT UNDER STATE CONTRACT # A-53824

WHEREAS, the Township of Marlboro Division of Police has recommended that the Township purchase a new Zetron Integrator RD Dispatch Console from Quality Wireless of Lakewood, New Jersey under State Contract #A-53824 for the amount of \$178,435.00; and

WHEREAS, pursuant to N.J.S.A. 40A:11-12, a municipality may, without advertising for bids, purchase goods under any contract for such goods entered into on behalf of the State by the Division of Purchase and Property in the Department of Treasury; and

WHEREAS, it is in the interest of the citizens of the Township of Marlboro, County of Monmouth and State of New Jersey to provide new dispatch equipment to the Division of Police; and

WHEREAS, funds are available in Account Numbers 8-01-106-101 for the amount of \$100,000.00; X-04-55-959-951 for the amount of \$28,350.00; X-04-55-962-918 for the amount of \$29,962.45 and T-14-56-857-807 for the amount of \$20,122.55 and have been certified to by the Chief Financial Officer of the Township of Marlboro.

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED, by the Township Council of the Township of Marlboro that authorization is hereby granted to purchase a new Zetron Integrator RD Dispatch Console from Quality Wireless of Lakewood, New Jersey under State Contract #A-53824 for the amount of \$178,435.00.

BE IT FURTHER RESOLVED, that a certified copy of this Resolution shall be provided to each of the following:

- a. Quality Wireless of Lakewood, New Jersey
- b. Township Administrator
- c. Township Division of Police
- d. Township Chief Financial Officer
- e. DeCotiis, FitzPatrick, Cole & Wisler, LLP

The following Res. # 2008-401/Ord. # 2008-43 (Prohibiting Left Turn Into and Out of Ambten Road Assoc. Development - Tennent Road) was introduced by reference, offered by Council Vice President Rosenthal and seconded by Council President Cantor and passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2008-401

BE IT RESOLVED by the Township Council of the Township of Marlboro that an Ordinance entitled:

ORDINANCE # 2008-43

AN ORDINANCE AMENDING AND SUPPLEMENTING ARTICLE XIII,
"SEMIPUBLIC AND PRIVATE ROADS AND PARKING AREAS",
SECTION 138-37 "ADDITIONAL PARKING AND TRAFFIC
REGULATIONS" OF THE CODE OF THE TOWNSHIP OF MARLBORO
TO PROHIBIT LEFT TURNS INTO AND OUT OF THE AMBTEN ROAD
ASSOCIATES DEVELOPMENT SITE, LOCATED ON TENNENT ROAD
BETWEEN AMBOY ROAD AND COMMERCIAL COURT CREATING AND
ESTABLISHING A NEW SUB-SECTION 138-37(K)

be introduced and passed on first reading and that the same be
advertised according to law; and

BE IT FURTHER RESOLVED that the same be considered for
final passage on December 18, 2008 at 8:00 p.m. at the
Marlboro Municipal Complex, 1979 Township Drive, Marlboro, New
Jersey, at which time all persons interested will be
given an opportunity to be heard concerning said ordinance.

ORDINANCE # 2008-43

AN ORDINANCE AMENDING AND SUPPLEMENTING ARTICLE XIII,
"SEMIPUBLIC AND PRIVATE ROADS AND PARKING AREAS",
SECTION 138-37 "ADDITIONAL PARKING AND TRAFFIC
REGULATIONS" OF THE CODE OF THE TOWNSHIP OF MARLBORO
TO PROHIBIT LEFT TURNS INTO AND OUT OF THE AMBTEN ROAD
ASSOCIATES DEVELOPMENT SITE, LOCATED ON TENNENT ROAD
BETWEEN AMBOY ROAD AND COMMERCIAL COURT CREATING AND
ESTABLISHING A NEW SUB-SECTION 138-37(K)

WHEREAS, Ambten Road Associates, LLC ("Developer") received
preliminary and final site plan approval to develop property located
in the Industrial Office Research District from the Marlboro
Township Planning Board under Docket No. PB 988-07; and

WHEREAS, Tennent Road is a County road owned and controlled by
the County of Monmouth, New Jersey; and

WHEREAS, as a condition of Site Plan approval, and pursuant to
the Monmouth County Planning Board Site Plan Action under Docket No.
MRSP8497, the Developer must prohibit left hand turns into and out
of the site (i.e., right turns in and out only) located on Tennent
Road between Amboy Road and Commercial Court, also known as Block
172, Lot 41 on the Official Tax Map of the Township of Marlboro,
Monmouth County, New Jersey, and provide a copy of an ordinance

effectuating such turning restriction to the Monmouth County Planning Board; and

WHEREAS, the Township of Marlboro Division of Police has recommended for public safety purposes that Section 138-37 be amended to prohibit left hand turns into and out of the Ambten Road Associates development site located on Tennent Road between Amboy Road and Commercial Court, also known as Block 172, Lot 41 on the Official Tax Map of the Township of Marlboro, Monmouth County, New Jersey; and

WHEREAS, in the interest of the health, safety and general welfare of the residents of the Township of Marlboro, the Township Council desires to amend Section 138-37 in accordance with the recommendations of the Division of Police, the Marlboro Township Planning Board and the Monmouth County Planning Board.

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED, by the Township Council of the Township of Marlboro, County of Monmouth and State of New Jersey that Chapter 138 "Vehicles and Traffic", Article XIII "Semipublic and Private Roads and Parking Areas", Section 138-37 "Additional Parking and Traffic Regulations" of the Code of the Township of Marlboro is hereby amended and supplemented to establish a new Sub-Section 138-37(K) entitled "Ambten Road Associates Development" to prohibit left hand turns into and out of the Ambten Road Associates development site located on Tennent Road between Amboy Road and Commercial Court as follows:

138-37(K) Ambten Road Associates Site.

Ambten Road Associates, LLC as a condition of Site Plan approval, and pursuant to the Monmouth County Planning Board Site Plan Action under Docket No. MRSP8497, must prohibit left hands turns into and out of its site which shall be enforceable as follows:

(1) There shall be no left hand turns into or out of the site (i.e., right turns in and out only) located on Tennent Road between Amboy Road and Commercial Court, also known as Block 172, Lot 41 on the Official Tax Map of the Township of Marlboro, Monmouth County, New Jersey.

BE IT FURTHER ORDAINED, that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section paragraph, subsection, clause or provision so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective.

BE IT FURTHER ORDAINED, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon passage and publication in accordance with applicable law.

The following Res. # 2008-402 (Authorizing Commodity Resale Agreement with Monmouth County) was introduced by reference, offered by Council President Cantor and seconded by Councilman LaRocca and passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2008-402

A RESOLUTION AUTHORIZING THE EXECUTION OF A COMMODITY RE-SALE AGREEMENT WITH THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY

WHEREAS, pursuant to N.J.A.C. 5:34-7.15, local contracting units may enter into Commodity Resale Agreements for the purchase of certain commodities from other contracting units; and

WHEREAS, the County of Monmouth has authorized the creation of the Monmouth County Commodity Resale System; and

WHEREAS, it is in the interest of the citizens of the Township of Marlboro, County of Monmouth and State of New Jersey to enter into a Commodity Resale Agreement with the County of Monmouth in order for the Township to become a member of the Monmouth County Commodity Resale System.

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED, by the Township Council of the Township of Marlboro, County of Monmouth, State of New Jersey, that the Mayor and Township Clerk are hereby authorized, respectively, to execute and witness the Commodity Resale Agreement with the County of Monmouth in a form substantially similar to that attached hereto and made a part hereof; and

BE IT FURTHER RESOLVED, that a certified copy of this Resolution shall be provided to each of the following:

- a. Clerk of the Board of Chosen Freeholders, County of Monmouth, Hall of Records, 1 East Main Street, Freehold, New Jersey 07728
- b. Mayor Jonathan L. Hornik
- c. Township Administrator
- d. Township Chief Financial Officer

e. DeCotiis, FitzPatrick, Cole & Wisler, LLP

The following items were carried to the December 18th agenda:
Item #19 (Tax Collector Resolutions).

At 9:50AM, Councilman LaRocca moved that the meeting go into executive session for reason of discussing litigation, acquisition of property and personnel. This was seconded by Councilwoman Marder, and as there was no objection, the Clerk was asked to cast one ballot. Recess was called and the executive session reconvened at 10:05 PM.

RESOLUTION # 2008-400

WHEREAS, it is determined by the governing body of the Township of Marlboro that it is necessary on the 4th day of December, 2008 to go into executive session for the purpose of discussing those items that are particularly exempted from the Open Public Meetings Act, namely, litigation.

BE IT FURTHER RESOLVED that the governing body shall adjourn to executive session for the purpose of discussing said aforementioned items and that such executive session should take approximately 30 minutes. Those items discussed in executive session shall remain confidential until such time as confidentiality is no longer required. Action may be taken following the executive session.

At 10:30PM, Councilwoman Marder moved that the meeting be opened. This was seconded by Council Vice President Rosenthal, and as there was no objection, the Clerk was asked to cast one ballot.

Council held a brief discussion on the DiMeo and McCarron farm properties, dealing with remediation.

At 10:35PM, Council Vice President Rosenthal moved that the meeting be adjourned. This was seconded by Councilwoman Marder, and as there was no objection, the Clerk was asked to cast one ballot.

MINUTES APPROVED: January 22, 2009

OFFERED BY: La Rocca AYES: 5

SECONDED BY: Rosenthal NAYS: 0

ALIDA MANCO
MUNICIPAL CLERK

JEFF CANTOR
COUNCIL PRESIDENT