

LEGISLATIVE MINUTES

MARLBORO TOWNSHIP COUNCIL MEETING

June 18, 2009

The Marlboro Township Council held its regularly scheduled meeting on June 18, 2009 at 8:00 P.M. at the Marlboro Municipal Complex, 1979 Township Drive, Marlboro, New Jersey.

Council President Rosenthal 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 2, 2009; faxed to the Board of Education Office; posted on the Bulletin Board of the Municipal Building posted on the Marlboro Township Website, and filed in the office of the Municipal Clerk.

The Clerk called the Roll.

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

Also present were: Mayor Jonathan L. Hornik, Ronald Gordon, Esq., Municipal Clerk Alida Manco, and Deputy Clerk Deborah Usalowicz.

The following Res. # 2009-265 (WMUA UV PROJECT - Commissioners Joseph Pernice and Jeff Rosen Res. #2009-265 - Amendment No. 5 to Service Contract - WMUA) was introduced by reference, offered by Council Vice President LaRocca, seconded by Councilwoman Tragni and passed on a roll call vote of 4 - 0 in favor (Absent: Cantor).

RESOLUTION #2009-265

TOWNSHIP OF MARLBORO RESOLUTION APPROVING  
AMENDMENT NO. 5 TO THE SERVICE CONTRACT WITH THE  
WESTERN MONMOUTH UTILITIES AUTHORITY AND  
CONSENTING TO THE UNDERTAKING OF THE SEVENTH  
PROJECT BY THE AUTHORITY

WHEREAS, the Western Monmouth Utilities Authority ("Authority") has determined to improve the Authority's sanitary sewer system by the undertaking of the following improvements to the Authority's wastewater treatment plant known as the Pine Brook Sewage Treatment Plant located in the Township of Manalapan, including all work, materials, equipment and appurtenances necessary and suitable therefor: installation of New Ultraviolet (UV) Disinfection Treatment System to replace the existing chlorination/dechlorination treatment process and related improvements (the "Seventh Project"); and

WHEREAS, the Authority has requested the Townships of Manalapan ("Manalapan") and Marlboro ("Marlboro") (collectively referred to as the "Participants") to consent to the Seventh Project and to extend the coverage of the Service Contract (as defined below) to the undertaking of the Seventh Project and the financing thereof through the issuance of bonds, notes or other evidence of indebtedness of the Authority in an amount not to exceed \$2,860,000; and

WHEREAS, in connection therewith it is necessary to amend the Service Contract between said parties dated as of January 16, 1978, as amended (the "Service Contract"), in order to: (1) add a definition of the Seventh Project, and (2) amend the definition of "Bond";

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Marlboro, in the County of Monmouth, New Jersey, as follows:

SECTION 1. The form of Amendment No. 5 to the Service Contract is hereby approved in substantially the form submitted to this meeting and attached hereto as Appendix A. The Mayor and the Township Clerk of Marlboro are hereby authorized to execute and attest, respectively, said Amendment No. 5 and to deliver the same.

SECTION 2. The undertaking of the Seventh Project is hereby consented to by Marlboro.

SECTION 3. This Resolution shall take effect upon the satisfaction of the following conditions: (A) approval by the Local

Finance Board, in the Division of Local Government Services of the New Jersey Department of Community Affairs, of the financing of the Seventh Project in an amount not to exceed \$2,860,000; and (B) approval by the New Jersey Department of Environmental Protection for the Authority to receive Federal stimulus funding pursuant to the American Recovery and Reinvestment Act of 2009 ("ARRA") in the form of principal forgiveness for 50% of the total loans being provided by the 2009 New Jersey Environmental Infrastructure ARRA Financing Program.

Councilwoman Tragni moved that the minutes of May 18 & May 21, 2009 be approved. This motion was seconded by Council Vice President LaRocca and the minutes were passed on a roll call vote of 4 - 0 in favor (Absent: Cantor).

The following Resolution #2009-250A (Budget Amendments) was introduced by reference, offered by Councilwoman Marder, seconded by Councilwoman Tragni, and passed on a roll call vote 4 - 0 in favor (Absent: Cantor).

RESOLUTION # 2009-250A

RESOLUTION OF THE TOWNSHIP OF MARLBORO  
COUNTY OF MONMOUTH, STATE OF NEW JERSEY  
TO AMEND APPROVED BUDGET IN ACCORDANCE  
WITH THE PROVISIONS OF 40A:4-9

WHEREAS, the local municipal budget for 2009 was approved on April 20, 2009; and

WHEREAS, the public hearing on said budget will be held on June 18, 2009; and

WHEREAS, the Township Council desires to amend said approved budget;

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of Marlboro, County of Monmouth that the following amendments to the approved budget of 2009 be made:

	CURRENT FUND	
	<u>From</u>	<u>To</u>
<u>REVENUES</u>		
6. Local Tax for Municipal Purposes Including		
Reserve for Uncollected Taxes	18,966,252.19	18,744,655.69

BE IT FURTHER RESOLVED, that a public hearing on said budget will be held at the Municipal Building on June 18, 2009 at 8:00 pm.

BE IT FURTHER RESOLVED, that three certified copies of this resolution be filed forthwith in the office of the Director of Local Government Services for certification of the 2009 Local Municipal Budget as amended.

Mayor Hornik gave a power point presentation on the 2009 budget. Council President Rosenthal opened the Public Hearing on the 2009 Budget as amended. After the Public Hearing was held and closed, the following Resolution # 2009-251 (Adoption of 2009 Municipal Budget) was introduced by reference, offered by Councilwoman Tragni, seconded by Councilwoman Marder and passed on a roll call vote of 4 - 0 in favor with (Absent: Cantor).

RESOLUTION # 2009-251

SECTION 2 - UPON ADOPTION FOR YEAR 2009

BE IT RESOLVED by the Mayor and Council of the Township of Marlboro, County of Monmouth that the budget herein before set forth is hereby adopted and shall constitute an appropriation for the purposes stated of the sums therein set forth as appropriations, and authorization of the amount of \$18,744,655.69 for municipal purposes, and \$625,456.67 Open Space, Recreation, Farmland and historic Preservation Trust Fund Levy.\*

\* Copies of attached material to be found in regular minute book in Clerk's office.

Council Vice President Rosenthal opened the Public Hearing on Ordinance # 2009-21 (Amending Chapter 132 - Discount for Volunteers Swim Facility). After the Public Hearing was held and closed, the following Resolution Res. # 2009-234/Ord. # 2009-21 (Amending Chapter 132 - Discount for Volunteers Swim Facility) was introduced by reference, offered by Councilman LaRocca and seconded by Councilwoman Marder. Marlboro Swim Club Division Chairwoman Lynn Franco was present for discussion and answered Council's questions. After discussion, the resolution/ordinance was passed on a roll call vote of 4 - 0 in favor (Absent: Cantor).

RESOLUTION # 2009-234

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

ORDINANCE # 2009-21

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 132 OF THE CODE OF THE TOWNSHIP OF MARLBORO, "TOWNSHIP SWIM UTILITY, MARLBORO SWIM CLUB AND MARLBORO AQUATIC SWIMMING POOL FACILITY, MUNICIPAL", ARTICLE I, "MARLBORO SWIM CLUB", SECTION 132-3, "MEMBERSHIP IN FACILITY" BY ESTABLISHING A NEW SUB-SECTION 132-3(K) ENTITLED "DISCOUNT MEMBERSHIPS", TO PROVIDE FOR DISCOUNTED MEMBERSHIPS FOR EVERY MEMBER IN GOOD STANDING OF A VOLUNTEER FIRE COMPANY OR VOLUNTEER FIRST AID SQUAD WHO IS PERFORMING VOLUNTEER SERVICE WITHIN THE TOWNSHIP OF MARLBORO

which was introduced on May 21, 2009, public hearing held June 18, 2009 ~~June 4, 2009~~, be adopted on second and final reading this 18<sup>th</sup> 4<sup>th</sup> day of June, 2009.

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

The following Resolution # 2009-252/Ord. # 2009-23 (Revised Flood Hazard Mitigation) was introduced by reference, offered by Councilwoman Tragni, seconded by Council Vice President Rosenthal and passed on a roll call vote 4 - 0 in favor (Absent: Cantor).

RESOLUTION # 2009-252

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

ORDINANCE # 2009-23

AN ORDINANCE DELETING SECTION 84-37, "FLOOD DAMAGE PREVENTION" OF CHAPTER 84, "LAND USE DEVELOPMENT AND REGULATIONS", IN ITS ENTIRETY AND REPLACING SAME WITH A NEW SECTION 84-37, "FLOOD DAMAGE PREVENTION" TO MAKE SAME CONSISTENT WITH THE REQUIREMENTS OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

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 July 16, 2009 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 # 2009-23

AN ORDINANCE DELETING SECTION 84-37, "FLOOD DAMAGE PREVENTION" OF CHAPTER 84, "LAND USE DEVELOPMENT AND REGULATIONS", IN ITS ENTIRETY AND REPLACING SAME WITH A NEW SECTION 84-37, "FLOOD DAMAGE PREVENTION" TO MAKE SAME CONSISTENT WITH THE REQUIREMENTS OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

WHEREAS, it is necessary to revise the Township's current flood damage prevention code to be consistent with the requirements set forth by the New Jersey Department of Environmental Protection; and

WHEREAS, the Township Council of the Township of Marlboro deems that it is in the best interests of the public health, safety and welfare to revise the Township Code concerning flood damage to be consistent with the requirements set forth by the New Jersey Department of Environmental Protection.

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 84-37, entitled Flood Damage Prevention, of Chapter 84, Land Use Development and Regulations, is hereby deleted in its entirety and replaced with a new Section 84-37, entitled Flood Damage Prevention, as follows:

§ 84-37. Flood damage prevention.

A. Statutory authorization; findings of fact; purpose and objectives.

(1) Statutory authorization. The Legislature of the State of New Jersey in N.J.S.A. 40:48-1 et seq., has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. Therefore, the Township Council of the Township of Marlboro, State of New Jersey, does ordain the following provisions.

(2) Findings of fact.

- (a) The flood hazard areas of the Township of Marlboro are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
  - (b) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards, causing increases in flood heights and velocities, and, when inadequately anchored, damage uses in other areas. Uses which are inadequately elevated, floodproofed or otherwise protected from flood damages also contribute to the flood loss.
- (3) Statement of purpose. It is the purpose of this section to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:
- (a) Protect human life and health.
  - (b) Minimize expenditure of public money for costly flood control projects.
  - (c) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
  - (d) Minimize prolonged business interruptions.
  - (e) Minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard.
  - (f) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas.
  - (g) Ensure that potential home buyers are notified that property is in an area of special flood hazard.
  - (h) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

(4) Methods of reducing flood losses. In order to accomplish its purposes, this section includes the following methods and provisions:

- (a) Restricts or prohibits uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increase in erosion or in flood heights or velocities.
- (b) Requires that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- (c) Controls the alteration of natural floodplains, stream channels and natural protective barriers which help accommodate or channel floodwaters.
- (d) Controls filling, grading, dredging and other development which may increase flood damage.
- (e) Prevents or regulates the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

B. Definitions. Unless specifically defined below, words or phrases used in this section shall be interpreted so as to give them the meaning they have in common usage and to give this section its most reasonable application.

APPEAL -- A request for a review of the Construction Official's interpretation of any provision of this section or a request for a variance.

AREA OF SHALLOW FLOODING -- A designated AO, AH or VO Zone on a community's Digital Flood Insurance Rate Map (DFIRM) with a one-percent or greater annual chance of flooding to an average depth from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD -- The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year.

BASE FLOOD -- The flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT -- Any area of the building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL -- A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.

DEVELOPMENT -- Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, storage of equipment or materials, excavation or drilling operations located within the area of special flood hazard.

ELEVATED BUILDING -- A nonbasement building built, in the case of a building in an area of special flood hazard, to have the top of the elevated floor or, in the case of a building in a coastal high-hazard area, to have the bottom of the lowest horizontal structural member of the elevated floor elevated above the ground level by means of piling, columns (posts and piers) or shear walls parallel to the flow of the water, and adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In the area of special flood hazard "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters.

FLOOD or FLOODING -- A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

DIGITAL FLOOD INSURANCE RATE MAP (DFIRM) -- The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY -- The official report in which the Federal Insurance Administration has provided flood profiles, as well as the Digital Flood Insurance Rate Map (DFIRM) and the water surface elevation of the base flood.

FLOODPLAIN MANAGEMENT REGULATIONS -- Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provides standards for the purpose of flood damage prevention and reduction.

FLOODWAY -- The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than two-tenths (0.2) foot.

HIGHEST ADJACENT GRADE - The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE -- Any structure that is:

- (1) Listed individually in the National Register of Historic Places as maintained by the Department of Interior or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified and preliminarily determined by the Secretary of the Interior as contributing to the historic significance of a registered historic district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a State Inventory of Historic Places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either as an approved state program as determined by the Secretary of the Interior or directly by the Secretary of the Interior in states without approved programs.

LOWEST FLOOR -- The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement, is not considered a building's "lowest floor," provided that such enclosure is not built so to render the structure in violation of other applicable nonelevation design requirements.

MANUFACTURED HOME -- A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include a recreational vehicle, park trailers, travel trailers and other similar vehicles.

MANUFACTURED HOME PARK or MANUFACTURED HOME SUBDIVISION -- A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION -- Structures for which the start of construction commenced on or after the effective date of this chapter and includes any subsequent improvements to such structure.

NEW MANUFACTURED HOME PARK OR SUBDIVISION -- A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by the municipality.

RECREATIONAL VEHICLE -- A vehicle which is built on a single chassis; 400 square feet or less when measured at the longest horizontal projections; designed to be self-propelled or permanently towable by a light-duty truck; and designed primarily not for use as a permanent dwelling but as temporary living quarters, for recreational, camping, travel or seasonal use.

START OF CONSTRUCTION -- (For other than new construction or substantial improvements under the Coastal Barrier Resources Act, P.L. 94-348) includes substantial improvement and means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways; nor does it

include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the "actual start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE -- A walled and roofed building, a manufactured home or a gas or liquid storage tank that is principally above ground.

SUBSTANTIAL DAMAGE -- Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT -- Any repair, rehabilitation, addition, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either before the start of construction of the improvement or, if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the Code Enforcement Officer and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places, provided that the alteration will not preclude the structure's continued designation as an historic structure.

VARIANCE -- A grant of relief to a person from the requirements of this section which permits construction in a manner otherwise prohibited by this section where specific enforcement would result in unnecessary hardship.

#### C. General provisions.

- (1) Lands to which this section applies. This section shall apply to all areas of special flood hazards within the jurisdiction of the Township of Marlboro.
- (2) Basis for establishing the areas of special flood hazard. The areas of special flood hazard identified by the Federal Insurance Administration through a scientific and engineering report entitled "Flood Insurance Study, Monmouth County, New Jersey" dated September 25, 2009, with accompanying Flood Insurance Rate Maps for Monmouth County, New Jersey as shown on index and panel numbers 34025C0020F, 34025C0038F, 34025C0039F, 34025C0130F, 34025C0135F, 34025C0141F, 34025C0142F, 34025C0151F, 34025C0152F, 34025C0153F, 34025C0154F, 34025C0161F, 34025C0163F; whose effective date is September 25, 2009. The above-referenced documents are hereby adopted and declared to be part of this ordinance. The Flood Insurance Study and maps are on file in the Marlboro Township Engineering Department, located at 1979 Township Drive.
- (3) Penalties for noncompliance. No structure or land shall hereafter be constructed, located, extended, converted or structurally altered without full compliance with the terms of this section and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$1,000 or imprisoned for not more than 90 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Township Business Administrator or his designee from taking such other lawful action as is necessary to prevent or remedy any violation.
- (4) Abrogation and greater restrictions. This section is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this section and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (5) Interpretation. In the interpretation and application of this section, all provisions shall be:
  - (a) Considered as minimum requirements.

- (b) Liberally construed in favor of the governing body.
- (c) Deemed neither to limit nor repeal any other powers granted under state statutes.

(6) Warning and disclaimer of liability. The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This section does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This section shall not create liability on the part of the Township of Marlboro or any officer or employee thereof or the Federal Insurance Administration for any flood damages that result from reliance on this section or any administrative decision lawfully made thereunder.

#### D. Administration.

- (1) Establishment of development permit. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Subsection C(2). Application for a development permit shall be made to the Construction Official on forms furnished by him and may include but not be limited to the following plans, in duplicate, drawn to scale, showing the nature, location, dimensions and elevations of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities and the location of the foregoing. Specifically, the following information is required:
  - (a) Elevation, in relation to mean sea level, of the lowest floor (including basement) of all structures.
  - (b) Elevation, in relation to mean sea level, to which any nonresidential structure has been floodproofed.
  - (c) Plans showing how any nonresidential floodproofed structure will meet the floodproofing criteria of Subsection E(2)(b), and after the structure is built, a certification by a registered professional engineer or architect that the structure as built meets the criteria of Subsection E(2)(b).
  - (d) Description of, the extent to which any water-course will be altered or relocated as a result of proposed development.

(2) Designation of Construction Official. The Construction Official is hereby appointed to administer and implement this section by granting or denying development permit applications in accordance with its provisions.

(3) Duties and responsibilities of the Construction Official shall include but not be limited to:

(a) Permit review.

[1] Review all development permits to determine that the permit requirements of this section have been satisfied.

[2] Review all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

[3] Review all development permits to determine if such proposed development is located in the floodway and assure that the encroachment provisions of Subsection F(4)(c) are met.

(b) Use of other base flood data. When base flood elevation and floodway data has not been provided in accordance with Subsection C(2), Basis for establishing the areas of special flood hazard, the Construction Official shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer Subsection E(2)(a), Specific standards, Residential construction, and Subsection E(2)(b), Specific standards, Nonresidential construction.

(c) Information to be obtained and maintained.

[1] Verify and record the actual elevation, in relation to mean sea level, of the lowest habitable floor, including basement, of all new or substantially improved structures, and whether or not the structure contains a basement.

[2] For all new or substantially improved floodproofed structures:

[a] Verify and record the actual elevation in relation to mean sea level.

[b] Maintain the floodproofing certifications required in Subsection D(1)(c).

[c] Maintain for public inspection all records pertaining to the provisions of this section.

(d) Alteration of watercourses.

[1] Notify adjacent communities and New Jersey Department of Environmental Protection, Dam Safety and Flood Control Section and Land Use Regulation Program, of and prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

[2] Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

(e) Interpretation of firm boundaries. Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this section.

(4) Variance procedure.

(a) Appeal board.

[1] The Planning Board of the Township of Marlboro shall decide appeals, except in the case of a use variance, then the Board of Adjustment shall be the agency to grant relief from the requirements of this section.

[2] The Planning Board, or Board of Adjustment in the case of a use variance, will hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Construction Official in the enforcement or administration of this section.

[3] Those aggrieved by the decision of the Planning Board or Board of Adjustment, or any taxpayer, may appeal such decision to the Township Council.

- [4] In passing upon such applications, the Planning Board, or Board of Adjustment in the case of a use variance, shall consider all technical evaluations, all relevant factors, standards specified in other provisions of this section and:
- [a] The danger that materials may be swept onto other lands to the injury of others.
  - [b] The danger to life and property due to flooding or erosion damage.
  - [c] The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
  - [d] The importance of the services provided by the proposed facility to the community.
  - [e] The necessity to the facility of a water-front location, where applicable.
  - [f] The availability of alternative locations not subject to flooding or erosion damage for the proposed use.
  - [g] The compatibility of the proposed use with existing and anticipated development.
  - [h] The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area.
  - [i] The safety of access to the property in times of flood for ordinary and emergency vehicles.
  - [j] The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
  - [k] The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.
- [5] Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded

by lots with existing structures constructed below the base flood level, provided items [a] through [k] above have been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the variance increases.

[6] Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that items [4][a] through [k] above have been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the variance increases.

[7] Upon consideration of the factors listed above and the purposes of this section, the Planning Board, or Board of Adjustment in the case of a use variance, may attach such conditions to the granting of variances as it deems necessary to further the purposes of this section.

[8] The Planning Board Secretary shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

(b) Conditions for variances.

[1] Variances may be issued for the repair, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places without regard to the procedures set forth in the remainder of this subsection and upon a determination that the proposed repair, rehabilitation or restoration will not preclude structures continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

[2] Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. However, variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

[3] Variances shall only be issued upon:

[a] A showing of good and sufficient cause.

[b] A determination that failure to grant the variance would result in exceptional hardship to the applicant.

[c] A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, or create nuisances, cause fraud on or victimization of the public as identified in Subsection D(4)(a)[4] of this section or conflict with existing local laws or ordinances.

[4] Base flood elevation data shall be provided for subdivision proposals and other proposed development which is greater than the lesser of 50 lots or five acres (whichever is less).

[5] Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

#### E. Provisions for flood hazard reduction.

(1) General standards. In all areas of special flood hazards, the following provisions are required:

##### (a) Anchoring.

[1] All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

[2] All manufactured homes shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

##### (b) Construction materials and methods.

[1] All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

[2] All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

(c) Utilities.

[1] All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

[2] New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

[3] On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

[4] Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(d) Subdivision proposals.

[1] All subdivision proposals shall be consistent with the need to minimize flood damage.

[2] All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed to minimize flood damage.

[3] All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

[4] Base flood elevation data shall be provided for subdivision proposals and other proposed development which is greater than the lesser of 50 lots or five acres.

(e) Enclosure openings. For all new construction and substantial improvements, the fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by

allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

[1] A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

[2] The bottom of all openings shall be no higher than one foot above grade.

[3] Openings may be equipped with screens, louvers or other covering or devices, provided that they permit the automatic entry and exit of floodwaters.

(2) Specific standards. In all areas of special flood hazards where base flood elevation data has been provided as set forth in Subsection C(2), Basis for establishing the areas of special flood hazard, or Subsection D(3)(b), Use of other base flood data, the following provisions are required:

(a) Residential construction. New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation.

(b) Nonresidential construction. New construction or substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below the base flood level the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. The standards of this subsection are to be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this subsection. Such certification shall be provided to the official as set forth in Subsection D(3)(c)[2].

(c) Manufactured homes.

[1] Manufactured homes shall be anchored in accordance with Subsection E(1)(a)[2].

[2] All manufactured homes to be placed or substantially improved within an area of special flood hazard shall be elevated on a permanent foundation, such that the top of the lowest floor is at or above the base flood elevation.

F. Floodplain management regulations.

(1) When the Administrator has not defined the special flood hazard areas within a community, has not provided water surface elevation data and has not provided sufficient data to identify the floodway or coastal high-hazard area, but the community has indicated the presence of such hazards by submitting an application to participate in the program, the community shall:

(a) Require permits for all proposed construction or other development in the community, including the placement of mobile homes, so that it may determine whether such construction or other development is proposed within flood-prone areas.

(b) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(c) Review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements, including the placement of prefabricated buildings and mobile homes, shall:

[1] Be designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure.

[2] Be constructed with materials and utility equipment resistant to flood damage.

[3] Be constructed by methods and practices that minimize flood damage.

(d) Review subdivision proposals and other proposed new development to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or

other proposed new development is in a flood-prone area, any such proposals shall be reviewed to assure that:

[1] All such proposals are consistent with the need to minimize flood damage within the flood-prone area.

[2] All public utilities and facilities, such as sewer, gas, electrical and water systems, are located and constructed to minimize or eliminate flood damage.

[3] Adequate drainage is provided to reduce exposure to flood hazards.

(e) Require within flood-prone areas new and replacement water supply systems to be designed so as to minimize or eliminate infiltration of floodwaters into the systems.

(f) Require within flood-prone areas:

[1] New and replacement sanitary sewage systems to be designed so as to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

[2] On-site waste disposal systems to be located so as to avoid impairment to them or contamination from them during flooding.

(2) When the Administrator has designated areas of special flood hazards (A Zones) by the publication of a community's DFIRM, but has neither produced water surface elevation data nor identified a floodway or coastal high-hazard area, the community shall:

(a) Require permits for all proposed construction and other developments, including the placement of mobile homes, within Zone A on the community's DFIRM.

(b) Require the application of the standards in Subsection F(1)(b), (c), (d), (e) and (f) to development within Zone A on the community's DFIRM.

(c) Require that all subdivision proposals and other proposed new developments greater than 50 lots or five acres, whichever is the lesser, include within such proposals base flood elevation data.

- (d) Obtain, review and reasonably utilize any base flood elevation data available from a federal, state or other source, until such other data has been provided by the Administrator, as criteria for requiring that all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated or floodproofed to or above base flood level, and that all new construction and substantial improvements of nonresidential structures have the lowest floor elevated or floodproofed to or above base flood level.
- (e) For the purpose of the determination of applicable flood insurance risk premium rates within Zone A on a community's DFIRM, obtain the elevation, in relation to mean sea level, of the lowest habitable floor, including basement, of all new or substantially improved structures, and whether or not such structures contain a basement, and obtain, if the structure has been floodproofed, the elevation, in relation to mean sea level, to which the structure was floodproofed, and maintain a record of all such information with the official designated by the community.
- (f) Notify, in riverine situations, adjacent communities and the state coordinating officer prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Administrator.
- (g) Assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.
- (h) Require that all mobile homes to be placed within Zone A on a community's DFIRM shall be anchored to resist flotation, collapse or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that over-the-top ties be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations, and mobile homes less than 50 feet long requiring one additional tie per side, and that frame ties be provided at each corner of the home, with five additional ties per side at intermediate points, and mobile homes less than 50 feet long requiring four additional ties per side; that all components of the anchoring system be capable of carrying a force of 4,800 pounds; and that any additions to the mobile home be similarly anchored.
- (i) Require that an evacuation plan indicating alternate vehicular access and escape routes be filed with appropriate

disaster preparedness authorities for mobile home parks and mobile home subdivisions located within Zone A on the community's DFIRM.

- (3) When the Administrator has provided a notice of final base flood elevations within Zones AE on the community's DFIRM and, if appropriate, has designated AO Zones, A99 Zones and unnumbered A Zones on the community's DFIRM, but has not identified a regulatory floodway or coastal high-hazard area, the community shall:
  - (a) Require the standards of Subsection F(2) of this section within all AE Zones, unnumbered A Zones and AO Zones on the community's DFIRM.
  - (b) Require that all new construction and substantial improvements of residential structures within Zones AE on the community's DFIRM have the lowest floor, including basement, elevated to or above the base flood level, unless the community is granted an exception by the Administrator for the allowance of basements and/or storm cellars.
  - (c) Require that all new construction and substantial improvements of nonresidential structures within Zones AE on the community's DFIRM have the lowest floor, including basement, elevated to or above the base flood level or, together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
  - (d) Provide that where floodproofing is utilized for a particular structure in accordance with Subsection F(3)(c) and (h), either a registered professional engineer or architect shall certify that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood, and a record of such certificates indicating the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained with the official designated by the community, or a certified copy of a local regulation containing detailed floodproofing specifications which satisfy the watertight performance standards of Subsection F(3)(c) of this section shall be submitted to the Administration for approval.

- (e) Require within Zones AE on the community's DFIRM for new mobile home parks and mobile home subdivisions, for expansions to existing mobile home parks and mobile home subdivisions and for existing mobile home parks and mobile home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds 50% of the value of the streets, utilities and pads before the repair, reconstruction or improvements has commenced, that stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile homes will be at or above the base flood level; that adequate surface drainage and access for a hauler are provided; and that in the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than 10 feet apart and reinforcement is provided for pilings more than six feet above the ground level.
- (f) Require for all mobile homes to be placed within Zones AE on the community's DFIRM but not into mobile home parks or mobile home subdivisions, that stands or lots are elevated in compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level; that adequate surface drainage and access for a hauler are provided; and that in the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than 10 feet apart and reinforcement is provided for piers more than six feet above ground level.
- (g) Require within any AO Zone on the community's DFIRM that all new construction and substantial improvements of residential structures have the lowest floor, including basement, elevated above the crown of the nearest street to or above the depth number specified on the community's DFIRM.
- (h) Require within any AO Zone on the community's DFIRM that all new construction and substantial improvements or nonresidential structures have the lowest floor, including basement, elevated above the crown of the nearest street to or above the depth number specified on the DFIRM or, together with attendant utility and sanitary facilities, be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

- (i) Require within any A99 Zones on a community's DFIRM the standards of Subsection F(1)(a), (b), (c) and 84-37F(2)(e) through (i) of this section.
  - (j) Require until a regulatory floodway is designated, that no new construction, substantial improvements or other development, including fill, shall be permitted within Zones AE on the community's DFIRM unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- (4) When the Administrator has provided a notice of final base flood elevations within Zones AE on the community's DFIRM and, if appropriate, has designated AO Zones, A99 Zones and unnumbered A Zones on the community's DFIRM and has provided data from which the community shall designate its regulatory floodway, the community shall:
- (a) Meet the requirements of Subsection F(3)(a) through (i) of this section.
  - (b) Select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than one foot at any point.
  - (c) Prohibit encroachments, including fill, new construction, substantial improvements and other development, within the adopted regulatory floodway that would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
  - (d) Prohibit the placement of any mobile homes, except in an existing mobile home park or mobile home subdivision, within the adopted regulatory floodway.
  - (e) Prohibit any proposed development, in all areas of special flood hazard in which base flood elevation data has been provided and no floodway has been designated, whose cumulative effect, when combined with all other existing and anticipated development, increases the water surface elevation of the base flood by more than two-tenths (0.2) of a foot at any point.

## G. Variances and exceptions.

- (1) The Administrator does not set forth absolute criteria for granting variances from the criteria set forth in this section. The issuance of a variance is for floodplain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance. The community, after examining the applicant's hardships, shall approve or disapprove a request. While the granting of variances generally is limited to a lot size less than one-half (1/2) acre, as set forth in Subsection G(2)(b) of this section, deviations from that limitation may occur. However, as the lot size increases beyond one-half (1/2) acre, the technical justification required for issuing a variance increases. The Administrator may review a community's findings justifying the granting of variances, and if that review indicates a pattern inconsistent with the objectives of sound floodplain management, the Administrator may take appropriate action under this section.
- (2) Variances may be issued by a community for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places without regard to the procedures set forth in this subsection. Procedures for the granting of variances by a community are as follows:
  - (a) Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
  - (b) Variances may be issued by a community for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the procedures of Subsection G(2)(c), (d) and (e) of this section.
  - (c) Variances shall only be issued by a community upon: a showing of good and sufficient cause; a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, or create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances; and a determination that failure to grant the variance would result in exceptional hardship to the applicant.

- (d) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (e) A community shall notify the applicant in writing, over the signature of a community official, that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and that such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required under this section.

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; and

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; and

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

The following Res. # 2009-253 (Renewal Liquor Licenses July 1, 2009 - June 30, 2010) was introduced by reference, offered by Councilwoman Marder, seconded by Councilwoman Tragni and passed on a roll call vote 4 - 0 in favor (Absent: Cantor).

RESOLUTION # 2009-253

BE IT RESOLVED by the Township Council of the Township of Marlboro that the following Liquor Licenses be and they are hereby renewed for the period beginning July 1, 2009 through June 30, 2010.

- |  |                 |
|--|-----------------|
| 1. B.T.A., LLC<br>T/A Pinos              | 1328 33 008 008 |
| 2. Morganville Independent Vol. Fire Co. | 1328 31 012 001 |

BE IT FURTHER RESOLVED that pursuant to NJAC 13: 2-19.1,

renewal of the aforementioned licenses shall not bar or abate any pending or anticipated disciplinary proceeding against any licensed establishment.

The following Res. # 2009-254 (Authorizing Prof. Services Contract CME - Improvements to School Road East) was introduced by reference, offered by Councilwoman Marder, seconded by Council President Rosenthal and passed on a roll call vote 4 - 0 in favor (Absent: Cantor).

RESOLUTION # 2009-254

A RESOLUTION AUTHORIZING AN AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT BETWEEN CME ASSOCIATES AND THE TOWNSHIP OF MARLBORO FOR ENGINEERING AND SURVEY SERVICES IN CONNECTION WITH THE IMPROVEMENTS TO SCHOOL ROAD EAST, MARLBORO TOWNSHIP, MONMOUTH COUNTY, NEW JERSEY

WHEREAS, on December 21, 1999, the New Jersey Commissioner of Transportation approved the funding for the New Jersey Transportation Trust Municipal Aid Program ("Program") for the improvements to School Road East project in the Township of Marlboro, New Jersey; and

WHEREAS, the Program provided for municipalities to award a construction contract within 12 months from the approval date, which initial time period expired on December 21, 2000 and for which several time extensions have been granted; and

WHEREAS, the Township of Marlboro would like to commence the School Road East project before such Program funds are rescinded; and

WHEREAS, the Township of Marlboro is in need of professional engineering and survey services for the improvements to School Road East, in the Township of Marlboro, Monmouth County, New Jersey (the "Professional Services"); and

WHEREAS, the Township requested proposals through a non-fair and open process pursuant to the provisions of N.J.S.A. 19:44A-20.5 et seq.; and

WHEREAS, the Township of Marlboro and CME Associates have previously entered into a Professional Services Contract, awarded under a non-fair and open process and seeks to amend such Contract to expand the scope of services to include the above-described

Professional Services for a fee not to exceed \$22,800.00 for such additional Professional Services as further described and set forth in CME's written proposal dated July 22, 2008 (the "Proposal"), such Proposal being attached hereto and made a part hereof; and

WHEREAS, the value of the contract will exceed \$17,500.00 in the aggregate; and

WHEREAS, funds will be available for this purpose in the 2009 Municipal Budget; and

WHEREAS, the Township Council has deemed it necessary and in the best interest of the municipality to hire CME Associates to provide the required additional Professional Services in accordance with the Proposal; and

WHEREAS, the services to be provided are considered to be "Professional Services" pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.; and

WHEREAS, the Local Public Contracts Law authorizes the awarding of a contract for "Professional Services" without public advertising for bids and bidding therefore, provided that the Resolution authorizing the contract and the contract itself be available for public inspection in the office of the Municipal Clerk and that notice of the awarding of the contract be published in a newspaper of general circulation in the municipality; and

WHEREAS, CME has previously completed and submitted a Business Entity Disclosure Certificate certifying that CME Associates has not made any reportable contributions that would bar the award of a contract pursuant to Marlboro Township Code Section 26 or N.J.S.A. 19:44A-20.5, and that no reportable contributions that would violate the law will be made during the term of the contract.

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED, by the Township Council of the Township of Marlboro that the Mayor is hereby authorized to execute an Amendment to the Professional Services Contract, in a form legally acceptable to the Township Attorney, between CME Associates and the Township of Marlboro to provide the additional Professional Services (as described and defined hereinabove) in accordance with the Proposal (as defined hereinabove and attached hereto), pursuant to a non-fair and open process; and

BE IT FURTHER RESOLVED, that this Amendment to the Professional Services Contract is awarded without competitive bidding pursuant to N.J.S.A. 40A:11-5(1)(a)(i) and shall provide for compensation in an

amount not to exceed \$22,800.00 for such additional Professional Services described in the Proposal; and

BE IT FURTHER RESOLVED, that the authorization for such Amendment shall be contingent upon the Township's receipt of grant funds from the New Jersey Transportation Trust Fund Municipal Aid Program; and

BE IT FURTHER RESOLVED, that the Business Entity Disclosure Certification shall be placed on file with this Resolution;

BE IT FURTHER RESOLVED, that a copy of the Amendment to the Professional Services Contract and this Resolution shall be available for public inspection in the office of the Municipal Clerk; and

BE IT FURTHER RESOLVED, notice of award of this Amendment to the Professional Services Contract shall be published pursuant to law, and a certified copy of this Resolution shall be provided to each of the following:

- a. CME Associates, 1460 Route 9 South, Howell, NJ  
07731
- b. Township Administrator
- c. Township Chief Financial Officer
- d. DeCotiis, FitzPatrick, Cole & Wisler, LLP

The following Res. # 2009-255 (Amendment to Res. #2009-124 (Extension of Contract - Patriot Consulting) was introduced by reference, offered by Councilwoman Tragni, and seconded by Council President Rosenthal and passed on a roll call vote 4 - 0 in favor (Absent: Cantor).

RESOLUTION # 2009-255

A RESOLUTION AMENDING RESOLUTION #2009-124 APPROVING A ONE-YEAR RENEWAL OF THE CONTRACT BETWEEN THE TOWNSHIP OF MARLBORO AND PATRIOT CONSULTING GROUP, INC. FOR THE PROVISION OF GRANT SEARCH AND WRITING SERVICES FOR THE TOWNSHIP OF MARLBORO

WHEREAS, by Resolution #2009-124, the Township of Marlboro approved the renewal of the Contract with Patriot Consulting Group, Inc. for grant writing and application services for a period of one year upon the same terms and conditions specified in the proposal submitted by Patriot Consulting Group, Inc. ("Patriot"), such

existing contract being previously authorized pursuant to Resolution #2008-172; and

WHEREAS, Resolution #2009-124 set forth the compensation for the term of renewal at \$12,000.00; and

WHEREAS, the scope of work has expanded, and Patriot's proposed fee for the contemplated services shall be for an amount not to exceed \$19,000.00; and

WHEREAS, funds will be available in Account Number 9-01- -085-201 for an amount not to exceed \$19,000.00 pending adoption of the 2009 Municipal Budget; and

WHEREAS, the Chief Financial Officer of the Township of Marlboro has determined that the value of the contract shall exceed \$17,500.00 in the aggregate; and

WHEREAS, the Business Entity has completed and submitted a Business Entity Disclosure Certification certifying that the Business Entity has not made any reportable contributions that would bar the award of a contract pursuant to Marlboro Township Code Section 26 or to N.J.S.A. 19:44A-20.5, and that no reportable contributions that would violate Marlboro Township Code Section 26 or N.J.S.A. 19:44A-20.5 will be made during the term of the contract; and

WHEREAS, the Township has been provided with the Business Entity's Disclosure of Campaign Contributions at least ten (10) days prior hereto, as required by P.L. 2005, c. 271.

WHEREAS, the Township Council desires to extend the contract with Patriot for a period of one year for a cost not to exceed \$19,000.00.

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED, by the Township Council of the Township of Marlboro that the Mayor is hereby authorized to renew the Contract between the Township of Marlboro and Patriot Consulting Group, Inc., P.O. Box 252, Monmouth Beach, NJ 07750-0252 previously authorized by Resolution #2008-172, which was awarded without competitive public bidding pursuant to the Local Public Contracts Law, specifically, N.J.S.A. 40A:11-5(1)(a)(i), for a renewal term of one year, such renewal term to be upon the same terms and conditions specified in the proposal submitted by Patriot Consulting Group, Inc., for an amount not to exceed \$19,000.00; and

BE IT FURTHER RESOLVED, that the Business Entity Disclosure Certification, Business Entity Disclosure of Campaign Contributions,

and Determination of Value shall be placed on file with this Resolution; and

BE IT FURTHER RESOLVED, that a copy of the Notice of this Resolution shall be published as required by law within ten (10) days of its passage; and

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

- a. Patriot Consulting Group, Inc.
- b. Township Administrator
- c. Chief Financial Officer
- d. DeCotiis, FitzPatrick, Cole & Wisler, LLP

The following Res. # 2009-256 (Authorizing Contract - Dicopoulos Productions, Inc.) was tabled.

The following Res. # 2009-257 (Authorizing Contract - Master Memorials Inc.) was introduced by reference, offered by Council Vice President LaRocca, seconded by Councilwoman Marder and passed on a roll call vote 4 - 0 in favor (Absent: Cantor).

RESOLUTION # 2009-257

A RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES CONTRACT BETWEEN MASTER MEMORIALS INC. FOR THE REPAIR AND RE-CONSTRUCTION OF THE SEPTEMBER 11 FOUNTAIN MEMORIAL IN THE TOWNSHIP OF MARLBORO, MONMOUTH COUNTY, NEW JERSEY

WHEREAS, pursuant to 40A:11-2(6), Professional Services means services rendered in the provision or performance of goods or services that are original and creative in character in a recognized field of artistic endeavor; and

WHEREAS, the Township of Marlboro is in need of professional services in connection with the repair and re-construction of the September 11 Fountain Memorial in the Township of Marlboro, Monmouth County, New Jersey (the "Artistic Services"); and

WHEREAS, such Artistic Services shall be rendered by Master Memorials, Inc. (also referred to as the "Business Entity") under a contract to be awarded pursuant to a non-fair and open process in accordance with the provisions of N.J.S.A 19:44A-20.5; and

WHEREAS, such Artistic Services constitute professional services that are exempt from public bidding pursuant to the Local Public Contracts Law, specifically N.J.S.A. 40A:11-5(1)(a)(i); and

WHEREAS, Master Memorials, Inc. has agreed to provide the aforementioned Artistic Services for an amount not to exceed \$23,000.00 pursuant to its proposal dated February 4, 2009; and

WHEREAS, the Chief Financial Officer of the Township of Marlboro has determined that the value of the contract will exceed \$17,500.00; and

WHEREAS, funds are available in Account Number 9-01-55-901-289 for an amount not to exceed \$23,000.00; and

WHEREAS, the Business Entity has completed and submitted a Business Entity Disclosure Certification certifying that the Business Entity has not made any reportable contributions that would bar the award of a contract pursuant to Marlboro Township Code Section 26 or to N.J.S.A. 19:44A-20.5, and that no reportable contributions that would violate Marlboro Township Code Section 26 or N.J.S.A. 19:44A-20.5 will be made during the term of the contract; and

WHEREAS, the Township has been provided with the Business Entity's Disclosure of Campaign Contributions at least ten (10) days prior hereto, as required by P.L. 2005, c. 271; and

WHEREAS, the Township Council has deemed it necessary and in the best interest of the municipality to hire Master Memorials, Inc. to provide the required Artistic Services for the Township's September 11 Fountain Memorial; and

WHEREAS, the Local Public Contracts Law authorizes the awarding of a contract for "Professional Services" without public advertising for bids and bidding therefore, provided that the Resolution authorizing the contract and the contract itself be available for public inspection in the office of the Municipal Clerk and that notice of the awarding of the contract be published in a newspaper of general circulation in the municipality.

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

1. The Township Council of the Township of Marlboro, hereby authorizes and approves the award of a Professional Services Contract to Master Memorials, Inc. to provide Artistic Services (as defined and described hereinabove) for the re-construction of the Township's September 11 Fountain Memorial, pursuant to a non-fair and open process in accordance with the provisions of N.J.S.A. 19:44A-20.5; and

2. The Professional Services Contract is awarded without competitive public bidding pursuant to the Local Public Contracts Law, specifically, N.J.S.A. 40A:11-5(1)(a)(i), and shall provide for total compensation in an amount not to exceed \$23,000.00, pursuant to the Business Entity's February 4, 2009 Proposal; and

3. The Mayor and Town Clerk are hereby authorized and directed to execute, seal and deliver the said Contract for the said Artistic Services on behalf of and in the name of the Township of Marlboro; and

4. The Business Entity Disclosure Certification, Business Entity Disclosure of Campaign Contributions, and Determination of Value shall be placed on file with this Resolution; and

5. A copy of this Resolution shall be published as required by law within ten (10) days of its passage; and

6. A certified copy of this Resolution shall be provided to each of the following:

- a. Master Memorials, Inc.
- b. Township Administrator
- c. Township Chief Financial Officer
- d. DeCotiis, FitzPatrick, Cole & Wisler, LLP

The following Res. # 2009-258 (Authorizing Contract - Trap Rock - Asphalt) was introduced by reference, offered by Councilwoman Marder, and seconded by Council Vice President LaRocca and passed on a roll call vote 4 - 0 in favor (Absent: Cantor).

RESOLUTION # 2009-258

A RESOLUTION AUTHORIZING AND APPROVING CHANGE ORDER #1 TO THE EXISTING CONTRACT BETWEEN THE TOWNSHIP OF MARLBORO AND TRAP ROCK INDUSTRIES, INC. FOR THE PROVISION OF SPECIFIED ROAD MATERIALS FOR THE TOWNSHIP OF MARLBORO DEPARTMENT OF PUBLIC WORKS (DPW)

WHEREAS, by Resolution #2008-307, the Township of Marlboro authorized the award of a contract to Trap Rock Industries, Inc. for the provision of specified road materials for the Township of Marlboro Department of Public Works; and

WHEREAS, Jewel Court requires road improvements and the provision of asphalt for base repairs and overlay; and

WHEREAS, Trap Rock Industries, Inc. has agreed to the delivery of a total of 580 tons of asphalt, at a price of \$50.00 per ton, for a total amount not to exceed \$29,000.00 for the work contemplated for Jewel Court under the existing contract; and

WHEREAS, in a Memorandum dated June 9, 2009, the Township Director of Public Works has recommended that a Change Order for the additional asphalt needed for base repairs and overlay at Jewel Court be approved; and

WHEREAS, Resolution #2008-307 awarded a contract to Trap Rock Industries, Inc., for road materials for an amount not to exceed \$251,420.00 and this proposed Change Order #1, in an amount not to exceed \$29,000.00, would increase said contract by 11.53% for a new total contract amount not to exceed \$280,420.00; and

WHEREAS, the Township Council of the Township of Marlboro has reviewed the Director of Public Works' June 9, 2009 Memorandum and is amenable to approving Change Order #1 in order to repair Jewel Court to protect the health, safety and welfare of the public.

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED, by the Township Council of the Township of Marlboro that Change Order #1 to the existing contract with Trap Rock Industries, Inc., is hereby approved in an amount not to exceed \$29,000.00, said Change Order #1 imposing an 11.53% increase in the original contract with Trap Rock Industries, thereby increasing the total contract value with Trap Rock Industries, Inc., (including Change Order #1) to an amount not to exceed \$280,420.00.

BE IT FURTHER RESOLVED, that the Chief Financial Officer has executed a Certification of Funds which is attached hereto, that indicates that sufficient funds are available from Account No. 904-55-940-276 for the payment of Change Order #1; and

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

- a. Trap Rock Industries, Inc.

- b. Mayor Jonathan L. Hornik
- c. Township Administrator
- d. Township Director of Public Works
- e. Township Chief Financial Officer
- f. DeCotiis, FitzPatrick, Cole & Wisler, LLP

The following Res. # 2009-259 (Authorizing Contract - Air Handler Chiller Compressor motor) was introduced by reference, offered by Councilwoman Marder, and seconded by Council Vice President LaRocca and passed on a roll call vote 4 - 0 in favor (Absent: Cantor).

RESOLUTION # 2009-259

A RESOLUTION AUTHORIZING PAYMENT TO AIRHANDLERS MECHANICAL SERVICES FOR THE EMERGENCY REPLACEMENT OF ONE CHILLER COMPRESSOR AT THE MARLBORO TOWNSHIP ADMINISTRATION BUILDING, MARLBORO TOWNSHIP, NEW JERSEY AS AN EMERGENCY CONTRACT PURSUANT TO N.J.S.A. 40A:11-6

WHEREAS, N.J.S.A. 40A:11-6 states that "Any contract may be... awarded for a contracting unit without public advertising for bids and bidding therefor when an emergency affecting the public health, safety or welfare requires the immediate performance of services..."; and

WHEREAS, N.J.S.A. 40A:11-6(b) states that "Upon the furnishing of such goods or services the contractor furnishing such goods or services shall be entitled to be paid therefor and the contracting unit shall be obligated for said payment..."; and

WHEREAS, during the start up of the air conditioning system at the Township Administration building, it was determined that the compressors for the main chiller unit had failed, such compressors being the actual units that provide the chilling for the air conditioning system; and

WHEREAS, the failed compressor requires replacement on an immediate basis as the collective bargaining agreements with the municipal workforce require that the Township Administration be closed upon the exceedance of a temperature threshold, effectively closing down the municipal government; and

WHEREAS, such compressor failure may pose a serious threat to the public health, safety and welfare, constituting an emergency under the terms of N.J.S.A. 40A:11-6; and

WHEREAS, the Township's Department of Public Works obtained two (2) proposals to make the necessary repair, the lowest proposal of which is from Airhandlers Mechanical Services, Inc., the Township's current HVAC maintenance company, at a cost of \$19,204.00; and

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of Marlboro, being the governing body thereof, that a contract and payment for the replacement of one chiller compressor at the Marlboro Township's Administration Building by Airhandlers Mechanical Services, Inc. for the amount of \$19,204.00 be and is hereby authorized and ratified pursuant to N.J.S.A. 40A:11-6(b); and

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

- a. Airhandlers Mechanical Services, Inc.
- b. Township Chief Financial Officer
- c. Township Administrator
- d. Director of Public Works
- e. DeCotiis, FitzPatrick, Cole & Wisler, LLP

The following Res. # 2009-264 (Authorizing Hiring & Payment Temporary Tax Collector) was introduced by reference, offered by Council Vice President LaRocca, seconded by Councilwoman Marder and passed on a roll call vote 4 - 0 in favor (Absent: Cantor).

RESOLUTION # 2009-264

A RESOLUTION AUTHORIZING AND RATIFYING A CONTRACT AND PAYMENT TO KAY T. REED FOR SERVICES OF A TEMPORARY TAX COLLECTOR FOR THE TOWNSHIP OF MARLBORO, MONMOUTH COUNTY, NEW JERSEY

WHEREAS, Shirley Giaquinto, Marlboro Township Tax Collector, has taken a leave of absence from her position under the Family Medical Leave Act; and

WHEREAS, during the Tax Collector's leave of absence it was necessary to hire a qualified person to undertake the position of the Marlboro Township Tax Collector to ensure the continued functioning of the municipal government in this statutory position; and

WHEREAS, the Township of Marlboro hired Kay T. Reed to serve as Temporary Tax Collector for the Township of Marlboro for the period of May 1, 2009 through July 30, 2009 at the following rates: (1) from May 1, 2009 to June 17, 2009, at a rate of \$35.00 per hour; and (2) from June 18, 2009 through July 30, 2009, at a rate of \$40.00 per hour for total compensation not to exceed \$6,000.00; and

WHEREAS, funds are available 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, Monmouth County, New Jersey, that the contract with and payment to Kay T. Reed for her services as Temporary Tax Collector for the Township of Marlboro, for the period of May 1, 2009 through July 30, 2009 at the following rates: (1) from May 1, 2009 to June 17, 2009, at a rate of \$35.00 per hour; and (2) from June 18, 2009 through July 30, 2009, at a rate of \$40.00 per hour for total compensation not to exceed \$6,000.00, be and is hereby authorized and ratified; and

BE IT FURTHER RESOLVED, that the Chief Financial Officer has certified that sufficient funds will be made available for the amount of \$2,000.00 from Account No: 9-01-046-286; and

BE IT FURTHER RESOLVED, that the remaining monies due in the amount of \$4,000.00 shall be paid out of the Municipal Budget upon the adoption of same; and

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

- a. Kay T. Reed
- b. Mayor Jonathan Hornik
- c. Township Business Administrator
- d. Township Chief Financial Officer
- e. Township Director of Public Works
- f. DeCotiis, FitzPatrick, Cole & Wisler, LLP

As the consent agenda, the following Resolution was introduced by reference, offered by Councilwoman Marder, seconded by Councilwoman Tragni and passed on a roll call vote of 4 - 0 in favor (Absent: Cantor):

RESOLUTION #2009-260

WHEREAS, Tax Sale Certificate #09-38 for Block 364 Lot 41.04, assessed to MRD Seventh Holding Co. LLC, located at 3 Serenity Place, has been redeemed in the amount of \$2,481.61,

WHEREAS, the holder of the above-mentioned tax sale certificate, Plymouth Park Tax Services, LLC, is entitled to the amount of the sale plus interest and costs totaling \$2,481.61,

NOW, THEREFORE, BE IT RESOLVED by the Council of the Township of Marlboro that the amount of \$2,481.61 be refunded to the holder of said certificate as above.

RESOLUTION # 2009-261

BE IT RESOLVED by the Township Council of the Township of Marlboro that a Raffle License # RL: 14-09 (Carnival Wheels and Games) be and it is hereby granted to Juvenile Diabetes Fdn. Intl. Central Jersey Chapter, 740 Broad Street, Shrewsbury, New Jersey 07702.

BE IT FURTHER RESOLVED that said Raffle will be held on the following dates and times:

August 29, 2009            10AM - 9PM

August 30, 2009            10AM - 5PM

at the Vanderburg Road Soccer Complex, Marlboro, N. J. 07746.

RESOLUTION # 2009-262

BE IT RESOLVED by the Township Council of the Township of Marlboro that a Raffle License # RL: 15-09 (On Premise 50/50) be and it is hereby granted to Juvenile Diabetes Fdn. Intl. Central Jersey Chapter, 740 Broad Street, Shrewsbury, New Jersey 07702.

BE IT FURTHER RESOLVED that said Raffle will be held on the following dates and times:

August 29, 2009            10AM - 9PM

August 30, 2009            10AM - 5PM

