TOWNSHIP OF DENVILLE
MUNICIPAL COUNCIL
REGULAR MEETING

May 1, 2018

The Meeting was called to order at 7:30 P.M. by Council President Gabel. The Salute to the Flag was recited, followed by an Invocation by Councilwoman Witte. Municipal Clerk Kathryn Bowditch-Leon read the Notice of Compliance with the Open Public Meetings Act and noted that this is a non-smoking facility. The Clerk requested that all electronics be silenced at this time.

ROLL CALL:
Present: Murphy, Buie, Witte, Bergen, Lyden, Borowiec, President Gabel
Absent: None

ALSO IN ATTENDANCE:
Thomas Andes, Mayor; Steven Ward, Administrator; John Jansen, Township Attorney

PRESENTATIONS/CEREMONIAL MATTERS:
Public Comment on the Township of Downtown Denville Business Improvement District 2018 Special Assessment

OPEN PUBLIC COMMENT
There were no comments on the B.I.D. 2018 special assessments.

Ryan Gleason, Executive Director of the Downtown Denville B.I.D., took this opportunity to officially file the 2017 B.I.D. Audit with the Municipal Council as well as read the opinion of the auditor. He also thanked the Council and Administration for their continued support.

CLOSE PUBLIC COMMENT

R-18-98: Resolution Approving the Assessment Roll of Township of Denville Downtown Business Improvement District

MOTION TO APPROVE R-18-98:
MOVED BY MEMBER MURPHY, SECONDED BY MEMBER BUIE
AYES: MURPHY, BUIE, WITTE, BERGEN, LYDEN, BOROWIEC, PRESIDENT GABEL
NAYS: NONE

LIAISON REPORTS:
Councilman Borowiec had nothing to report.
Councilwoman Lyden had nothing to report.
Councilman Bergen had nothing to report.
Councilman Murphy reported that the Downtown Denville B.I.D. held their regular monthly meeting last week and will have their quarterly breakfast tomorrow, where the Executive Director of the Montclair B.I.D. will speak. He then reported that the Green Sustainability Committee attended the Denville Farmer’s Market and distributed recycling information and other “green items”. He stated that they will be working with Valleyview School students at the Denville Farmer’s Market this Sunday.
Councilman Buie reported that the Beautification Committee has been busy planting. He asked Administration to contact the State to see if the Route 46 east off ramp to Route 53 by Wendy’s and the Route 80 on ramp from Route 53 north could be cleaned up. He stated that the Environmental Commission meeting will be held on Thursday.
Councilwoman Witte reported that TransOptions will be attending the Kiwanis Bike Rodeo on June 14th, where they will be providing and fitting bike helmets and doing bike safety presentations. She stated that the Morris Hills Regional District Board of Education presented their budget at their last meeting and
highlighted some line items, which included extra funding from the School Choice program as well as the opening of a new Performing Arts Academy.

President Gabel reported that both the Fire Department Years of Service Celebration and Relay for Life will be this Saturday. He stated that the Historical Society Yard Sale will be held on May 20th and that the Rivers and Streams Committee's annual clean-up will be held on May 12th from 9A.M. to 3 P.M. He then reminded everyone that, beginning this Sunday, the Denville Farmer's Market will be held every Sunday through November.

MAYOR'S REPORT:
Mayor Andes advised that Dogs Gone Wild will be held on May 12th at Cooks Pond. He reported that the Harlem Wizards basketball game fundraiser was very successful. He then stated that a playground meeting was held this afternoon and the new Gardner Field playground equipment has been ordered. He stated that Project Playground 2.0 is very close to attaining their fundraising goal.

Mayor Andes congratulated OEM Coordinator Wesley Sharples on his tenacity in getting reimbursement from FEMA for damage done to the Valley View Firehouse by Hurricane Irene. He stated that with the payment of $396,861, the repairs to the firehouse will be paid off.

ADMINISTRATOR'S REPORT:
Administrator Ward thanked DPW Director John Egbert and Fire Chief Rich Yobs for working out a collaborative agreement which will allow for those DPW employees who are active firefighters, either with Denville or another municipality, to respond to calls during the day when it is sometimes hard to get volunteers.

Mr. Ward then stated that he attended the Fairness Hearing for the RAM Associates and Glenmont Commons settlement agreements. He read into the record his summary of the hearing, a copy of which may be found at the end of these minutes.

There was a discussion about what the Township's final obligation may be and how it will be determined. Mr. Jansen explained the realistic development potential has to next be determined. Then a final obligation can be fixed. He stated that the Special Master will review the Township Planner's analysis as well as those submitted by the intervenors, and ultimately it will be up to the Judge to set the Township's obligation. He stated that Township could look to the Mercer County decision as a template of what may occur.

CORRESPONDENCE:
All correspondence has been copied and distributed to Council.

OPEN PUBLIC PORTION
No one wished to be heard.

CLOSE PUBLIC PORTION

MATTERS OF OLD AND/OR NEW BUSINESS:
Councilwoman Lyden asked if the Township will be putting the summary of the Fairness Hearing on the Township's website, to which Mr. Ward advised that they may be able to obtain the transcript of the hearing which could then be put on the website.

ORDINANCES FOR ADOPTION
NONE

ORDINANCES FOR INTRODUCTION:
13-18
BE IT RESOLVED that an Ordinance entitled:
An Ordinance of the Township of Denville, County of Morris, State of New Jersey to Amend Fees for Contracted Police Services
MOTION TO PASS ON FIRST READING:
MOVED BY MEMBER BERGEN, SECONDED BY MEMBER BUIE

BE IT FURTHER RESOLVED that the Municipal Clerk be authorized and directed to advertise this ordinance in The Citizen newspaper according to law.

BE IT FURTHER RESOLVED that said ordinance shall be considered for final passage at the meeting of the Municipal Council of the Township of Denville on 06-12-2018 at 7:30 p.m. in the evening, prevailing time, at the municipal building in said Township of Denville at which time and place all persons interested shall be given an opportunity to be heard concerning said ordinance.

BE IT FURTHER RESOLVED that the Municipal Clerk be authorized and directed to advertise this ordinance in The Citizen newspaper according to law.

MOTION TO PASS ON FIRST READING:
MOVED BY MEMBER BERGEN, SECONDED BY MEMBER BUIE

BE IT RESOLVED that an Ordinance entitled:
An Ordinance of the Township of Denville, County of Morris, State of New Jersey to Amend Fees for Contracted Police Services

Be Passed on First Reading

BE IT RESOLVED that an Ordinance entitled:
An Ordinance of the Township of Denville, County of Morris, State of New Jersey to Establish a Three (3) Year Pet License Fee Provision

Be Introduced and Read by Title on First Reading:
MOTION TO READ BY TITLE:
MOVED BY MEMBER LYDEN, SECONDED BY MEMBER WITTE
AYES: LYDEN, WITTE, MURPHY, BUJIE, BERGEN, BOROWIEC, PRESIDENT GABEL
NAYS: NONE

BE IT RESOLVED that an Ordinance entitled:
An Ordinance of the Township of Denville, County of Morris, State of New Jersey to Establish a Three (3) Year Pet License Fee Provision

Be Introduced and Read by Title on First Reading:
MOTION TO READ BY TITLE:
MOVED BY MEMBER WITTE, SECONDED BY MEMBER BERGEN
AYES: WITTE, BERGEN, MURPHY, BUJIE, LYDEN, BOROWIEC, PRESIDENT GABEL
NAYS: NONE

BE IT RESOLVED that an Ordinance entitled:
An Ordinance of the Township of Denville, County of Morris, State of New Jersey to Establish a Three (3) Year Pet License Fee Provision

Be Passed on First Reading

BE IT FURTHER RESOLVED that said ordinance shall be considered for final passage at the meeting of the Municipal Council of the Township of Denville on 06-12-2018 at 7:30 p.m. in the evening, prevailing time, at the municipal building in said Township of Denville at which time and place all persons interested shall be given an opportunity to be heard concerning said ordinance.

BE IT FURTHER RESOLVED that the Municipal Clerk be authorized and directed to advertise this ordinance in The Citizen newspaper according to law.

MOTION TO PASS ON FIRST READING:
MOVED BY MEMBER BERGEN, SECONDED BY MEMBER BUIE
Township Council
05-01-2018

AYES: BERGEN, BUIE, MURPHY, WITTE, LYDEN, BOROWIEC, PRESIDENT GABEL
NAYS: NONE

ITEMS FOR DISCUSSION AND/OR ACTION:
NONE

CONSENT AGENDA:
R-18-99: Resolution Authorizing Raffle Licenses in the Township of Denville
R-18-100: Resolution Authorizing the Issuance of Social Affair Permits by the State of New Jersey Division of Alcoholic Beverage Control
R-18-101: Resolution Authorizing Refund of Recreation Department Fees
R-18-102: Resolution Authorizing a Refund of a COAH Development Fee

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

MOTION TO APPROVE THE CONSENT AGENDA:
MOVED BY MEMBER BUIE, SECONDED BY MEMBER BERGEN
AYES: BUIE, BERGEN, MURPHY, WITTE, LYDEN, BOROWIEC, PRESIDENT GABEL
NAYS: NONE

NON-CONSENT AGENDA:
R-18-103: Resolution Authorizing the Execution of Change Order No. 1 with American Diving Supply, LLC for the Furnishing of Denville Fire Department Dive Team Equipment

MOTION TO APPROVE R-18-103:
MOVED BY MEMBER MURPHY, SECONDED BY MEMBER BERGEN
AYES: MURPHY, BERGEN, BUIE, WITTE, LYDEN, BOROWIEC, PRESIDENT GABEL
NAYS: NONE

R-18-104: Resolution Authorizing the Execution of a Sign License Agreement with Prime Healthcare Services – Saint Clare’s, LLC Granting Consent to Maintain the “Emergency-Patient Discharge” Sign Within the Right-of-Way

MOTION TO APPROVE R-18-104:
MOVED BY MEMBER WITTE, SECONDED BY MEMBER BERGEN
AYES: WITTE, BERGEN, MURPHY, BUIE, LYDEN, BOROWIEC, PRESIDENT GABEL
NAYS: NONE

R-18-105: Resolution Acknowledging and Consenting to the Request of the Township of Parsippany-Troy Hills that the Township of Denville Assess and Collect Taxes for the Property Identified as Block 6, Lot 12.01 on the Tax Map of the Township of Parsippany-Troy Hills

MOTION TO APPROVE R-18-105:
MOVED BY MEMBER WITTE, SECONDED BY MEMBER LYDEN
AYES: WITTE, LYDEN, MURPHY, BUIE, BERGEN, BOROWIEC, PRESIDENT GABEL
NAYS: NONE

MINUTES FOR ADOPTION:
April 10, 2018
April 17, 2018

MOVED BY MEMBER WITTE, SECONDED BY MEMBER MURPHY
MOTION TO ADJOURN:
MOVED BY MEMBER WITTE, SECONDED BY MEMBER BUIE
AYES: UNANIMOUS

The Meeting adjourned at 8:04 P.M.

Kathryn Bowditch-Leon, RMC
Municipal Clerk

On Friday, April 20, 2018, a Fairness Hearing was held in Superior Court regarding the two (2) settlement agreements the Township entered into in December 2017 with Glenmont Commons and RAM Associates/Toll Brothers. Judge Maryann Nergaard presided over the hearing. The Township was represented by Ed Buzak (John Jansen was in attendance as an observer) and Jason Kasler. Attorneys were present for interveners Glenmont Commons, RAM Associates/Toll Brothers as well as 382 Franklin Road and Lennar/US Homes (Young Tract). There were two members of the public from Denville I recognized.

After qualifying Mr. Kasler as an expert in Planning and Affordable Housing, Mr. Buzak had Mr. Kasler walk through the various features of each of the two properties included in the settlement agreements and the developments proposed thereon. Besides discussing environmental conditions and constraints, Mr. Kasler also discussed the proposed developments and the affordable housing yields from each development. Mr. Buzak was thorough in his questioning and Mr. Kasler was comprehensive in his responses. The attorneys for the interveners/developers declined their ability to cross-examine Mr. Kasler.

After Mr. Kasler concluded his testimony, the Special Master to the Court Phil Canton took the stand. Mr. Canton indicated that he concurred with the testimony of Mr. Kasler and supported the settlement agreements. He did point out that as the RAM Associates/Toll Brothers property was located within the Highlands Planning Area and outside the sewer service area, the issue of sewer service would have to be addressed. After Mr. Canton left the stand, the Judge asked Mr. Buzak to call a witness to speak about the status of sewers to the RAM Associates tract. As I had the most knowledge, I was called to the stand and explained the Township received a grant from the Highlands Council to perform a Water Use and Conservation Plan. Before the NJDEP will make a determination as to place the property into the sewer service area, they statutorily require a recommendation from the Highlands Council. Before the Highlands Council can provide a recommendation, the municipality needs to have a Water Use and Conservation Plan developed. I indicated to the Court that the study was underway and should be completed in the coming months.

After hearing the testimony, the Judge recognized a resident, who advised the Court he wished to make a statement. Mr. Buzak objected to the Judge that a procedure to speak was established in the public notice and was not followed by a resident (providing advance notice to all parties). The judge acknowledged the objection but indicated she would allow a resident to make a statement. A resident commented that he had attended all of the public hearings before the Denville Township Council and no one from the community came out in favor of these developments. Furthermore, a resident mentioned the local Board of Education requested the opportunity to perform an impact study on how such developments would impact the school and that an additional impact study should be performed on how these developments would impact traffic. A resident also pointed out that based upon his research, the biggest driver in increased property taxes in Denville and throughout the State of New Jersey as a whole was residential development. A resident concluded by stating he mentioned all of these concerns to the Township Council at the public meetings and he and other members of the public were repeatedly told that municipalities are not able to consider traffic impact, impact on schools or local property tax impact in attempting to satisfy a yet unknown affordable housing obligation.

Judge Nergaard responded to a resident by indicating that she was a Morris County resident and former local elected official and was sympathetic to the concerns he raised. However, she was firm in indicating that her obligation is to ensure a municipality is working to facilitate the satisfying of its affordable housing obligation. The other issues raised [traffic impact, school impact and tax impact] are factors that need to
be addressed with the State legislature and Judge Nergaard implied that they could not be factored into her decision. She is bound by the Supreme Court’s edict in *Mt. Laurel IV*.

In making her ruling, the Judge first complimented the Township and the two interveners for working together. Specifically, she mentioned that the proposed developments met both the letter of the law but also met the spirit of the law by integrating the affordable units in with the market rates units so they were as architecturally indistinguishable possible. She indicated that is better for the development and ultimately better for the community as a whole.

The judge requested Mr. Buzak prepare an order so she could approve the settlement agreements and asked that said order be provided to her early this week. Once signed, she was very clear that the Township had 60-days to introduce and adopt the T-5 Zoning Ordinance. Once adopted, she was very clear that the developers had 60-days to file an application before the appropriate land use board. Therefore, Kathy Bowditch-Leon and I will be calling Mr. Jansen this afternoon to discuss the introduction and adoption schedule. However, we may need to introduce the ordinance as early as next Tuesday, May 1, 2018 or at the absolute latest Tuesday, May 15, 2018 (looking at the calendar and based upon what day the Judge signs the order, the May 15th meeting may be too late to introduce).

One final and very notable statement from the Judge was that as part of her ruling, she indicated she would extend Denville Township temporary immunity [from builder’s remedy lawsuits]. However, in referencing the recent Mercer County decision, Judge Nergaard made it clear that it was almost certain that our ultimate obligation was going to be much higher than the Township presented to the court in its Conceptual Fair Share Plan in April 2016. She also specifically stated that “If progress does not continue [towards satisfying our affordable housing obligation], this issue of our temporary immunity will be revisited.

Prior to adjourning the meeting, the attorneys representing the two other interveners pressed the judge to establish dates for hearings on their proposed developments. Although no dates were provided by the judge, Special Master Phil Canton indicated that within the coming week(s) he would be contacting the parties to review the Vacant Land Adjustment submitted by Mr. Kasler. Regardless, it is clear the pressure will remain from both the other interveners, our adversary and the court to continue forward with the process despite not having a firm obligation assigned to Denville. I’ve copied in John Jansen in the event that I made any misstatements or from a legal perspective I did not utilize the appropriate terminology.