TOWNSHIP OF DENVILLE  
MUNICIPAL COUNCIL  
REGULAR MEETING  
AUGUST 14, 2012

The Meeting was called to order by President Kuser at 7:30 p.m. The Salute to the Flag was recited, followed by an Invocation given by Councilwoman Lyden. The Open Public Meetings Act Statement was read by Township Clerk Donna Costello.

ROLL CALL: FITZPATRICK, GABEL, GOLINSKI, LYDEN, SCOLLANS, SMITH, KUSER

ALSO IN ATTENDANCE: MAYOR ANDES, ADMINISTRATOR WARD, TOWNSHIP ATTORNEY JANSSEN AND TOWNSHIP ENGINEER RUSCHKE.

LIAISON REPORTS:
Councilman Gabel reported that he met with Susan Reinhardt of the People With Challenges Committee. Ms. Reinhardt advised that the Committee will be helping out in the Social Services Department, in the food pantry and at Thanksgiving with food baskets. Mr. Gabel noted that they will also collaborate with the Knights of Columbus with their fund raiser and will be a part of the Fall Festival on October 7th.

Mr. Gabel advised that he received a couple of calls from Ward 1 residents who were very pleased with the paving project.

Councilmen Fitzpatrick and Golinski, as well as Councilwomen Smith and Lyden had nothing to report.

Councilman Scollans reported that the Knuth Farm Vintage Baseball Game drew a large crowd and was very successful. Mr. Scollans advised that concerns were expressed at the Senior Men’s Meeting this morning. He said that it was in regard to boating on Cook’s Pond. He said that he explained that there is an ordinance that prohibits boating on Cook’s Pond. Mr. Scollans noted that some people would like to have that changed and he told them to put their request in writing.

Mr. Scollans stated that the acquisition of McCarter Park also seems to be a burning issue.

President Kuser interjected that there was an article in the Neighbor News regarding McCarter Park which contained some inaccuracies. He advised that he has sent an e-mail to the Council to clear up those issues. Mr. Kuser said that it was a letter from former Mayor Hussa who stated that the Park is on the ROSI and it is not.

Attorney Jansen clarified that 1 acre of the parcel is on the ROSI but that the ROSI, in the certification, refers to “all lands held by the local unit” for recreation and conservation purposes. Attorney Jansen stated that, since the municipality does not hold the property, it has no business being on the ROSI. He said that he believes that it was put on the ROSI in error since the Township does not own, lease or control McCarter Park.

President Kuser said that will be looked into.

President Kuser reported that the Recreation Committee met and everything is running smoothly. He said that the Try Harder Triathalon will be held this week end.

President Kuser noted that he was in the downtown area last night and it was bustling
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with people visiting the restaurants and stores.  

MAYOR’S REPORT  
Mayor Andes reported that it was a beautiful day on Sri Lanka Day and that the Township actually won the cricket match.  
The Mayor also commented on the Vintage Baseball Game and said that the Farm was the perfect backdrop and it was very enjoyable.  
Mayor Andes reported that there are six new townhouses that were built through the Township’s partnership with Habitat for Humanity. He said that the dedication was held last week.  
The Mayor noted that the Coalition for River Cleanup has begun. He said that Wharton, Dover, Rockaway Township, Rockaway Borough and Denville are all participating and the de-snagging is ongoing. 

ADMINISTRATOR’S REPORT: 
Administrator Ward advised that, as a follow-up to Mr. Gabel’s report, the 2012 road resurfacing has been completed. It went very smoothly and a lot of positive feedback has been received. He noted that the 2012 grant money was used for some of the roads. Mr. Ward said that at the next Council meeting a resolution will be presented to apply for the 2013 DOT grant to pave Franklin Road as a first priority and a portion of Diamond Spring Road. He said the County may partner with the Township on the Diamond Spring Road paving.  
Administrator Ward stated that an opportunity has arisen in the form of a grant from the U.S. Economic Development Agency for towns that were damaged by the hurricane last year. He said that very large grants are available and our grant writer has been commissioned, working with our Engineer, to submit a grant application in excess of $1.5 million to implement flood mitigation measures that will help mitigate flooding due to major storms. 
The Administrator advised that the FEMA buyout program is moving forward, having had a good report from the environmental inspections on all eleven homes. Mr. Ward advised that there was a meeting with the employees to go over the new Employees’ Handbook, which was distributed to them recently, and to answer any questions that the employees had. He noted that the Council members will also receive a copy of the handbook. 
The Administrator advised that a pre-construction meeting was held last week for the Police Department renovations and another will be held next week. He said that the project is moving forward. 
President Kuser asked if there has been an application made for a grant for the Firehouse. Mr. Ward explained that an application for FEMA reimbursement has been made and that the Firehouse would not qualify for the flood mitigation grant. 

PUBLIC PORTION:  
Gerry Idec, 1 East Longview Trail, asked Attorney Jansen if, having maintained a
property such as McCarter Park for over 50 years, does the owner then have the right to refuse entry to the property.

Attorney Jansen replied that what Mr. Idec is referring to is known as Adverse Possession.

He said that there are different criteria for different types of property. Mr. Jansen noted that one of the criterion for Adverse Possession is that it has to be truly adverse. He said that if the owner allows you to use the property, then it is not adverse. Mr. Jansen stated that he would not rule out Adverse Possession, nor will he discuss it in detail in public. He added that the cost of bringing an Adverse Possession suit would be significantly higher than the Township’s anticipated cost to acquire the property.

Mr. Idec asked if the sidewalk is part of the McCarter Park property or is it Denville’s. Attorney Jansen replied that he can’t say with certainty because it varies from place to place. He explained some of the variations in the ownership and regulation of sidewalks and roadways. Mr. Jansen noted that a title search might have to be done to determine ownership of the sidewalk.

Mr. Idec then stated that the Township is being paid $8,000 per year in taxes on property that is useless and now the Township wants to pay as much as $30,000 to buy this property. He asked how the Council can justify that purchase and the loss of $8,000 in taxes.

President Kuser replied that he does not think the property is useless. He said that most of it is in a flood area but it is the entrance to our town and a lot of hard-working volunteers do keep it beautiful. Mr. Kuser noted that Jersey City could, at any time, fence the property and let it become an eyesore, so there is some validity to the purchase of the property. He added that the Council has done nothing so far, other than give the Mayor and Administrator permission to look into the purchase of the property. Mr. Kuser gave full credit to Mr. Fuertges and the Beautification Committee, which includes Councilwoman Lyden, for the current beautiful condition of the Park.

CLOSE PUBLIC PORTION.

CORRESPONDENCE: All copied to Council.

MATTERS OF OLD AND/OR NEW BUSINESS: None.

ORDINANCE(S) FOR ADOPTION:

#14-12 AUTHORIZES ACQUISITION OF REAL PROPERTY UNDER THE HAZARD MITIGATION GRANT PROGRAM AND APPROPRIATES GRANT FUNDS

BE IT RESOLVED THAT AN ORDINANCE ENTITLED:

AN ORDINANCE AUTHORIZING THE ACQUISITION OF CERTAIN REAL PROPERTY IN THE TOWNSHIP OF DENVILLE, COUNTY OF MORRIS, AND STATE OF NEW JERSEY, UNDER THE HAZARD MITIGATION GRANT PROGRAM AND
APPROPRIATING GRANT FUNDS
BE READ BY TITLE ON SECOND READING AND A HEARING HELD THEREON:

MOTION TO READ BY TITLE: MOVED BY MEMBER FITZPATRICK, SECONDED BY MEMBER GOLINSKI
AYES: FITZPATRICK, GOLINSKI, GABEL, SMITH, LYDEN, SCOLLANS, KUSER

OPEN PUBLIC HEARING: No one wished to be heard.
CLOSE PUBLIC HEARING.

BE IT RESOLVED THAT AN ORDINANCE ENTITLED:
AN ORDINANCE AUTHORIZING THE ACQUISITION OF CERTAIN REAL PROPERTY IN THE TOWNSHIP OF DENVILLE, COUNTY OF MORRIS, AND STATE OF NEW JERSEY, UNDER THE HAZARD MITIGATION GRANT PROGRAM AND APPROPRIATING GRANT FUNDS
BE PASSED ON FINAL READING AND THAT A NOTICE OF FINAL PASSAGE BE PUBLISHED IN THE 8-22-12 ISSUE OF THE CITIZEN.
MOTION TO ADOPT: MOVED BY MEMBER FITZPATRICK, SECONDED BY MEMBER GOLINSKI
AYES: FITZPATRICK, GOLINSKI, GABEL, SMITH, LYDEN, SCOLLANS, KUSER

#15-12 AMENDS PEDDLERS AND SOLICITORS ORDINANCE
BE IT RESOLVED THAT AN ORDINANCE ENTITLED:
AN ORDINANCE TO AMEND CHAPTER IV, GENERAL LICENSING, SECTION 4-7, PEDDLERS AND SOLICITORS, OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF DENVILLE, MORRIS COUNTY, NEW JERSEY
BE READ BY TITLE ON SECOND READING AND A HEARING HELD THEREON:
MOTION TO READ BY TITLE: MOVED BY MEMBER SCOLLANS, SECONDED BY MEMBER GABEL
AYES: SCOLLANS, GABEL, FITZPATRICK, SMITH, LYDEN, GOLINSKI, KUSER

OPEN PUBLIC HEARING:
President Kuser commented that he hopes a “do not call” list will be prepared by the Township.
CLOSE PUBLIC PORTION.

BE IT RESOLVED THAT AN ORDINANCE ENTITLED:
AN ORDINANCE TO AMEND CHAPTER IV, GENERAL LICENSING, SECTION 4-7, PEDDLERS AND SOLICITORS, OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF DENVILLE, MORRIS COUNTY, NEW JERSEY
BE PASSED ON FINAL READING AND THAT A NOTICE OF FINAL PASSAGE BE PUBLISHED IN THE 8-22-12 ISSUE OF THE CITIZEN
MOTION TO ADOPT: MOVED BY MEMBER SCOLLANS, SECONDED BY MEMBER LYDEN
AYES: SCOLLANS, LYDEN, GABEL, FITZPATRICK, SMITH, GOLINSKI, KUSER

#16-12 AMENDS THE LAND USE CODE TO ESTABLISH A HOTEL USE OVERLAY ZONE AND DEVELOPMENT REGULATIONS
BE IT RESOLVED THAT AN ORDINANCE ENTITLED:
AN ORDINANCE TO AMEND THE CODE OF THE TOWNSHIP OF DENVILLE, CHAPTER 19, LAND USE, ARTICLE 5, ZONE REGULATIONS, IN ORDER TO ESTABLISH HOTEL USE OVERLAY ZONE AND DEVELOPMENT REGULATIONS
BE READ BY TITLE ON SECOND READING AND A HEARING HELD THEREON:
MOTION TO READ BY TITLE: MOVED BY MEMBER SMITH, SECONDED BY MEMBER FITZPATRICK
AYES: SMITH, FITZPATRICK, GABEL, LYDEN, GOLINSKI, SCOLLANS, KUSER

OPEN PUBLIC HEARING:
Ted Einhorn, Esq. of the law firm of Einhorn, Harris, Ascher, Barbarito & Frost in Denville advised that his firm represents the owner of Lot 2.01, which includes the Hampton Inn. He noted that the ordinance deals with three lots: Lot 2.01 consists of 3.51 acres, Lot 2.02 has 2.2 acres and the largest lot, Lot 2.0, which has a 60,000 sq. ft. office building on it, has 7.02 acres. Mr. Einhorn stated that Mr. Denzler, the Township Planner, referred to action taken by the Board of Adjustment in 1998 as one of the reasons that this ordinance should be adopted. He added that these lots are in the I-2 zone and in 1998 the I-2 zone did not have hotels as a permitted use.

Mr. Einhorn gave some background regarding the use variance and sub-division granted to Mr. Barnish by the Board of Adjustment, which then allowed for a hotel at that site.

Mr. Einhorn gave the following chronological order of events:
2000 Master Plan revisited
2002 Previous Council decided that in the I-1 and I-2 zones hotels should be a permitted use. The Floor Area Ration (FAR) of 25% and a height limitation of 30 feet were not changed.
2006 In the reexamination of the Master Plan there was no mention of hotels, lodgings or FAR modifications. The Planning Board did not suggest any change in the FAR or height limitation. Mr. Barnish’s corporation applied for a use variance on Lot 2.02 to allow an FAR of 68% and a height of 55 feet.
2008 Use variance denied due to concerns regarding traffic and other issues.
2009A local Planner, Adrian Humbert, on behalf of Mr. Barnish, sent a letter to the Council requesting a zone change to allow an FAR of 60% and a height limitation of 55 feet. The Council suggested that Mr. Humbert go to the Planning Board. Mr. Denzler proposed a hotel overlay zone for the three lots at that time. The Planning Board was concerned that this was “spot zoning” and denied the application. It went back to the
Council and no ordinance was adopted.

2012 The ordinance before the Council this evening proposes an FAR of 75%.

Mr. Einhorn noted that the ordinance was introduced by the Council and sent to the Planning Board for review. He said that the Planning Board never addressed the FAR during its discussion. Mr. Einhorn added that the occupancy rate for hotels was also not addressed and that his client has advised him that the rate for his hotel, and those in the surrounding area, has been 56 - 58% for the past 3 years.

Mr. Einhorn stated there are some important facts that are missing and have not been put before the board. Mr. Einhorn advised that, on behalf of his client, he has filed a Notice of Protest which means that adoption of this ordinance would require an affirmative vote of 2/3 of the Council. Mr. Einhorn stated that the Board of Adjustment is required to provide an annual report to the Council and Planning Board noting the things that they think should be changed in an ordinance. He said that for the years 2008, 09 and 11 the Board of Adjustment never mentioned that they felt that the FAR should be changed.

Mr. Einhorn said that his client is opposed to this ordinance. He noted that in Mr. Denzler’s report there is significant discussion regarding the fiscal impact should this ordinance be adopted. He quoted a court case which indicated that the purpose of increasing tax ratables is not recognized by the Municipal Land Use Law. Mr. Einhorn noted that any thought of tax ratables with regard to adopting a zone change is not proper. Mr. Einhorn argued that any hotel that is erected should be treated the same as the existing hotel and not be permitted to have an FAR of 75% as opposed to the 40% permitted by variance to his client. He added that this ordinance would violate the law which requires the treatment of a similar use in a similar fashion.

Mr. Einhorn quoted from Mr. Denzler’s report and stated that, if he understands correctly what Mr. Denzler is saying, it is illegal and can’t be done that way. Mr. Einhorn further argued his point by saying that the Master Plan makes no proposal to have a new FAR; it would be spot zoning and would cause traffic issues.

John Wyciskala, Esq., representing Mr. Barnish, stated that they are in support of the Hotel Overlay Zone Ordinance. He said that, as Mr. Denzler noted, it is consistent with the Master Plan, which is a conclusion reached by the Planning Board last week when they considered this ordinance. Mr. Wyciskala advised that he believes that the proposed regulations are consistent with modern hotel development criteria and will allow for a nicer hotel facility at this location. He noted that the location has access to major highways and will have limited impact on nearby residential areas. Mr. Wyciskala added that Mr. Denzler did comment in his report about the fiscal benefits, including rateables and room rates, but pointed out that it is not just about the fiscal benefits. He said that Mr. Denzler, in paragraph 6 of his report, made reference to the purposes of the Municipal Land Use Law, as well as the Master Plan. Mr. Wyciskala quoted various purposes listed in the Municipal Land Use Law that he feels are promoted by this
ordinance. He said that the proposed FAR is 75% but he would ask the Council to take note of the other restrictions that are in place which will limit the scope of development. Mr. Wyciskala noted other matters that will limit the size and scope of the building that can go there. He asked that the Council adopt this ordinance.

Marilyn Kuntz, 34 Kitchell Road, said that she is here not just as a private citizen, but she is also a member of the Planning Board. Mrs. Kuntz noted that, at the Planning Board meeting where this ordinance was discussed, sufficient information was not provided. She said that Mr. Denzler was not present and nothing was presented to the Board in writing. Mrs. Kuntz added that they did not discuss the FAR and said “shame on me because I've been a member for awhile”. She advised that two other members of the Board were not present at that meeting and there was not a detailed discussion. Mrs. Kuntz apologized for not having had all of the prior information on hand at that meeting. She said that she did some research the next day and discovered that a hotel indeed can be built in the I-2 zone. Mrs. Kuntz advised that further research revealed that prior applications were denied by the Board of Adjustment and the Planning Board, primarily due to the FAR. She asked the Council to hold off on voting for this ordinance until they acquire more information and make an informed decision.

President Kuser stated that Attorney Jansen will make some comments on this. Mr. Kuser said that he will leave the public portion on this ordinance open and asked for a motion to table the ordinance to the September 4th meeting. He noted that it will give the Council time to meet with Mr. Denzler for further discussion.

MOTION TO CONTINUE THE PUBLIC HEARING AND TABLE FURTHER CONSIDERATION OF ORDINANCE #16-12 TO SEPTEMBER 4TH : MOVED BY MEMBER GOLINSKI, SECONDED BY MEMBER LYDEN

AYES: GOLINSKI, LYDEN, GABEL, FITZPATRICK, SMITH, SCOLLANS, KUSER

Attorney Jansen commented that he would like the record to reflect receipt of the Planning Board report. He said that the report indicates, in the first instance, that the ordinance is consistent with the Master Plan and then goes on to recommend a couple of modifications to the ordinance.

1. That the Council impose a height limitation on the canopy or other extension of the front of the building.

2. That the canopy be included in the calculation of the ground floor area for purposes of determining the maximum building coverage.

Mr. Jansen explained that the statute specifically provides that the Council may approve or change any such recommendation by the Planning Board by a vote of the majority of its full authorized membership. He added that its reasons for not following such recommendations must be recorded in the minutes. Attorney Jansen advised that, even before hearing any of the comments that were made tonight, his recommendation was going to be that the Council hold off until it has an opportunity to consult with Mr. Denzler to see how he feels about these recommendations. He said that the other concerns raised reinforce this recommendation.
Mr. Jansen noted that, with respect to the protest, Mr. Einhorn has filed a protest on behalf of his client. He explained the statute governing such protest and reiterated Mr. Einhorn’s statement that, if the protest is valid, the ordinance does not become effective unless it is passed by a favorable vote of 2/3 of all members of the governing body. Mr. Jansen advised that he has done the calculations and Mr. Einhorn’s client owns 20% of the area addressed by the ordinance and, in his opinion, the protest is valid. Attorney Jansen defined the phrase “spot zoning” and read from the case law. He said that, under the criteria stated, he does not think we have a spot zoning situation here. Uniformity issues do need to be addressed.

Mr. Jansen stated that he is not sure that, when the ordinance was introduced, the Council was aware that a hotel use was already permitted in the I-2 zone. He said that he was not aware of it and, although he was not directly involved in the preparation of the ordinance, he thought the ordinance was implementing the recommendation contained in the 2000 Master Plan, as reiterated in the 2006 Master Plan. Mr. Jansen said that he is not a big fan of overlays and certainly not of overlays that don’t encompass the entire district. He said that it is something that needs to be discussed with Mr. Denzler to determine what his rationale was with regard to this.

Attorney Jansen commented that the mere expression of fiscal considerations doesn’t usually invalidate an ordinance, as long as there are legitimate Municipal Land Use purposes being promoted by the ordinance and he thinks that is the case here. He said it is a bit naive to think that elected officials do not consider economic aspects when they are involved in addressing zoning issues. Mr. Jansen further commented that the denial by the Boards may have been because the FAR and height limitations in the application were so different from what is set forth in the ordinance that they didn’t feel comfortable granting a deviation to that degree. He said that, if the Township wishes to further the opportunity for hotel development in that area, a higher FAR and a higher height limitation are absolutely crucial.

President Kuser explained that the Public Portion has been continued to September 4th, when a gentleman wished to be heard. Attorney Jansen interjected that the Council President has the discretion to allow him to speak tonight.

John Murphy, member of the Board of Adjustment. Mr. Murphy submitted to the Council that the Board of Adjustment has a lot more experience with this particular zone and the proposed use. He suggested that the applicant and the objector reach out to the Board of Adjustment for their opinion because he feels it is more pertinent than that of the Planning Board. Mr. Murphy explained that the reason he wanted to be heard now is that their next meeting is not until September 5th.

President Kuser asked Mr. Ward to please have Mr. Denzler present on September 4th. Mr. Einhorn asked to be notified if there is a decision made not to go forward with the
ordinance on September 4th.
Mr. Kuser replied that he will be the first to know.

#17-12 AMENDS CHAPTER XIV, STREETS, CURBS AND SIDEWALKS
BE IT RESOLVED THAT AN ORDINANCE ENTITLED:
AN ORDINANCE OF THE TOWNSHIP OF DENVILLE, COUNTY OF MORRIS, STATE
OF NEW JERSEY TO AMEND CHAPTER XIV, STREETS, CURBS AND SIDEWALKS,
OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF DENVILLE
BE READ BY TITLE ON SECOND READING AND A HEARING HELD THEREON:
MOTION TO READ BY TITLE: MOVED BY MEMBER SMITH, SECONDED BY
MEMBER GABEL
AYES: SMITH, GABEL, FITZPATRICK, LYDEN, GOLINSKI, SCOLLANS, KUSER

OPEN PUBLIC HEARING:
Gerry Idec, 1 East Longview Trail, asked for a clarification of the ordinance.
President Kuser asked Mr. Ward to field that question.
Administrator Ward explained that this ordinance puts a five year moratorium on cutting
into a road in order to protect newly paved roads. He said that emergency situations
would be honored. Mr. Ward added that a company or individual must post insurance
and a bond to insure that the roadway will be restored to the condition that existed
before any road cutting is done.
Mr. Idec asked about the curbs and sidewalks.
Engineer Ruschke commented that the ordinance does cover any excavation or
disturbance within the municipal right-of-way. He said that the ordinance covers the
paved portion, the curbs and the sidewalks.
Mr. Idec asked who is responsible for the repairs. Mr. Ruschke replied that issue is
addressed in another section of the ordinance but the responsibility still lies with the
homeowner.

CLOSE PUBLIC PORTION.

BE IT RESOLVED THAT AN ORDINANCE ENTITLED:
AN ORDINANCE OF THE TOWNSHIP OF DENVILLE, COUNTY OF MORRIS, STATE
OF NEW JERSEY TO AMEND CHAPTER XIV, STREETS, CURBS AND SIDEWALKS,
OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF DENVILLE
BE PASSED ON FINAL READING AND THAT A NOTICE OF FINAL PASSAGE BE
PUBLISHED IN THE 8-22-12 ISSUE OF THE CITIZEN.
MOTION TO ADOPT: MOVED BY MEMBER SMITH, SECONDED BY MEMBER
LYDEN
AYES: SMITH, LYDEN, GABEL, FITZPATRICK, GOLINSKI, SCOLLANS, KUSER

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#18-12 AMENDS TAXI REGULATIONS AND FEES  
BE IT RESOLVED THAT AN ORDINANCE ENTITLED:  
AN ORDINANCE OF THE TOWNSHIP OF DENVILLE, COUNTY OF MORRIS, STATE  
OF NEW JERSEY TO AMEND CHAPTER IX, TAXICABS AND CHAPTER II-A, FEES,  
RATES AND CHARGES  
BE INTRODUCED AND READ BY TITLE ON FIRST READING:  
MOTION TO INTRODUCE: MOVED BY MEMBER SCOLLANS, SECONDED BY  
MEMBER GOLINSKI  
DISCUSSION: None.  
AYES: SCOLLANS, GOLINSKI, GABEL, FITZPATRICK, SMITH, LYDEN, KUSER  

BE IT RESOLVED THAT AN ORDINANCE ENTITLED:  
AN ORDINANCE OF THE TOWNSHIP OF DENVILLE, COUNTY OF MORRIS, STATE  
OF NEW JERSEY TO AMEND CHAPTER IX, TAXICABS AND CHAPTER II-A, FEES,  
RATES AND CHARGES  
BE PASSED ON FIRST READING  
AND BE IT FURTHER RESOLVED THAT SAID ORDINANCE SHALL BE  
CONSIDERED FOR FINAL PASSAGE AT THE MEETING OF THE MUNICIPAL  
COUNCIL OF THE TOWNSHIP OF DENVILLE ON SEPTEMBER 18, 2012 AT 7:30  
P.M. IN THE EVENING, PREVAILING TIME AT THE MUNICIPAL BUILDING IN SAID  
TOWNSHIP OF DENVILLE AT WHICH TIME AND PLACE ALL PERSONS  
INTERESTED SHALL BE GIVEN AN OPPORTUNITY TO BE HEARD CONCERNING  
SAID ORDINANCE.  
BE IT FURTHER RESOLVED THAT THE MUNICIPAL CLERK BE AUTHORIZED AND  
DIRECTED TO ADVERTISE THIS ORDINANCE IN THE CITIZEN ACCORDING TO  
LAW.  
MOTION TO PASS ON FIRST READING: MOVED BY MEMBER SCOLLANS,  
SECONDED BY MEMBER GOLINSKI  
AYES: SCOLLANS, GOLINSKI, GABEL, FITZPATRICK, SMITH, LYDEN, KUSER  

#19-12 VACATING A PORTION OF OLD BOONTON ROAD  
Attorney Jansen interjected that there is a typographical error in the body of the  
Ordinance. He directed President Kuser's attention to the fourth “Whereas” and said  
that it should read “Municipal Council” not “Township Committee”.  
BE IT RESOLVED THAT AN ORDINANCE ENTITLED:  
AN ORDINANCE VACATING AND DISCONTINUING THE PUBLIC RIGHTS FOR  
ROAD PURPOSES IN A PORTION OF OLD BOONTON ROAD  
BE INTRODUCED AND READ BY TITLE ON FIRST READING:  
MOTION TO INTRODUCE: MOVED BY MEMBER SCOLLANS, SECONDED BY  
MEMBER LYDEN  
DISCUSSION: Attorney Jansen explained the reason for this ordinance. In the early  
1980’s, the Rockaway River Country Club dedicated some property for a realignment of  
the roads around the Country Club. He said that normally, when there is a dedication
for realignment, there is then a vacation of the old right-of-way which is no longer needed. Mr. Jansen explained that, in this instance, the vacation slipped through the cracks and was never done. He said that it came to the Club’s attention, they did all of the survey work and are now asking the Council to vacate a small triangular section of Old Boonton Road that amounts to about 5,839 square feet. Mr. Jansen noted that the ordinance also provides for a quitclaim deed to the Country Club releasing any interest that the Township may have in the underlying property.

AYES: SCOLLANS, LYDEN, GABEL, FITZPATRICK, SMITH, GOLINSKI, KUSER

BE IT RESOLVED THAT AN ORDINANCE ENTITLED:
AN ORDINANCE VACATING AND DISCONTINUING THE PUBLIC RIGHTS FOR ROAD PURPOSES IN A PORTION OF OLD BOONTON ROAD
BE PASSED ON FIRST READING
AND BE IT FURTHER RESOLVED THAT SAID ORDINANCE SHALL BE CONSIDERED FOR FINAL PASSAGE AT THE MEETING OF THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF DENVILLE AT WHICH TIME AND PLACE ALL PERSONS INTERESTED SHALL BE GIVEN AN OPPORTUNITY TO BE HEARD CONCERNING SAID ORDINANCE
BE IT FURTHER RESOLVED THAT THE MUNICIPAL CLERK BE AUTHORIZED AND DIRECTED TO ADVERTISE THIS ORDINANCE IN THE CITIZEN ACCORDING TO LAW.
MOTION TO PASS ON FIRST READING: MOVED BY MEMBER SCOLLANS, SECONDED BY MEMBER LYDEN
AYES: SCOLLANS, LYDEN, GABEL, FITZPATRICK, SMITH, GOLINSKI, KUSER

President Kuser called for a brief recess at 8:57 p.m.
The meeting resumed at 9:04 P.M.

President Kuser advised that R-12-208 is being removed from the Consent Agenda. He asked if anyone from the Council or the public wished to have anything else removed from the Consent Agenda. There was no response.

CONSENT AGENDA:
R-12-202 RESOLUTION OF THE TOWNSHIP OF DENVILLE AUTHORIZING THE ACCEPTANCE OF A GRANT FROM THE MORRIS COUNTY JOINT INSURANCE FUND FOR BASE ACCREDITATION SERVICES AND EXECUTION OF A GRANT AGREEMENT
R-12-203 RESOLUTION OF THE TOWNSHIP OF DENVILLE AFFIRMING THE DESIGNATION OF THE GREEN SUSTAINABILITY COMMITTEE OF THE TOWNSHIP OF DENVILLE AS THE GREEN TEAM TO LEAD IN THE IMPLEMENTATION OF SUSTAINABLE JERSEY MUNICIPAL CERTIFICATION
R-12-204 RESOLUTION AUTHORIZING SUBMISSION OF AN APPLICATION BY
THE DENVILLE MUNICIPAL ALLIANCE COMMITTEE FOR A GRANT FOR CALENDAR YEAR 2013 - $13,062.00

R-12-205 RESOLUTION AUTHORIZING THE REFUND OF MONEY DUE TO THE REDEMPTION OF A TAX SALE CERTIFICATE - $1,640.76

R-12-206 RESOLUTION AUTHORIZING REINSTATEMENT OF THE ORIGINAL SEWER ASSESSMENT INSTALLMENT PLAN FOR CERTAIN PROPERTIES IN THE TOWNSHIP OF DENVILLE

R-12-207 RESOLUTION AUTHORIZING RAFFLE LICENSES IN THE TOWNSHIP OF DENVILLE

R-12-209 RESOLUTION AUTHORIZING REFUND OF RECREATION DEPARTMENT FEES

R-12-210 RESOLUTION AUTHORIZING EXECUTION OF A SIDE-BAR AMENDMENT TO THE PBA LOCAL #142 CONTRACT

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

AYES: SMITH, GOLINSKI, GABEL, FITZPATRICK, LYDEN, SCOLLANS, KUSER

NON-CONSENT RESOLUTIONS:

R-12-208 RESOLUTION OF CONSENT FOR SUBMITTAL OF TREATMENT WORKS APPROVAL (TWA) FOR BLOCK 31501, LOT 3 - CRISP, 3000 ROUTE 10 IN THE TOWNSHIP OF DENVILLE

MOTION TO APPROVE R-12-208: MOVED BY MEMBER SMITH, SECONDED BY MEMBER GOLINSKI

DISCUSSION: At the request of Councilman Golinski, Mr. Ruschke gave the following explanation of the ordinance.

Mr. Ruschke noted that in April of this year, the Dept. of Environmental Protection (DEP) passed new regulations to regulate individual sub-surface disposal systems (septic systems). He said that there are several more stringent requirements that are imposed on individual property owners. Mr. Ruschke advised that one of the regulations is that if you expand a retail store to include food, you have to get a Treatment Works Approval (TWA) from the DEP, even though the projected flow is less than 2,000 gallons per day. He said that previously, the Health Officer would approve TWAs’s but the Council may see more types of TWAs’s being requested because of the new DEP regulations. At the request of Councilwoman Smith, Mr. Ruschke explained the location and type of business that this resolution covers.

AYES: SMITH, GOLINSKI, GABEL, FITZPATRICK, LYDEN, SCOLLANS, KUSER

R-12-211 RESOLUTION AUTHORIZING PROFESSIONAL SERVICES AGREEMENT WITH JOHN K. RUSCHKE, P.E. OF HATCH MOTT MAC DONALD FOR ENGINEERING SERVICES REGARDING FLOOD PLAIN MANAGEMENT - FLOOD RISK REDUCTION INVESTIGATIONS IN AN AMOUNT NOT TO EXCEED $20,000

MOTION TO APPROVE R-12-211: MOVED BY MEMBER SCOLLANS, SECONDED
BY MEMBER SMITH
DISCUSSION: Councilman Fitzpatrick asked for clarification of the work involved. Mr. Ruschke replied that he has identified a much larger scope of work and many more tasks that could be implemented to ultimately meet the goal of coming up with some very substantial flood mitigation measures. He said that the initial task is to review some of the past reports, especially the one from 1980 which was very comprehensive, as well as the Army Corps of Engineers investigation. Mr. Ruschke noted that this is the first step in starting to develop an action plan to identify other projects that should be evaluated. He said that he will be drawing from the expertise and experience of other members of the Hatch Mott Mac Donald firm. He explained some of the work they will be doing to identify solutions that will be specific to Denville. There was a brief discussion regarding the availability of grants for this project. In answer to a question from Councilman Golinski, Mr. Ruschke said that the project should be completed in two or three months time.
AYES: SCOLLANS, SMITH, FITZPATRICK, GABEL, LYDEN, GOLINSKI, KUSER

R-12-212 RESOLUTION AUTHORIZING PROFESSIONAL SERVICES AGREEMENT WITH USA ARCHITECTS PLANNERS AND INTERIOR DESIGNERS, PA FOR ARCHITECTURAL SERVICES IN CONNECTION WITH THE RENOVATIONS TO THE VALLEY VIEW COMPANY #3 FIREHOUSE IN THE AMOUNT OF $69,500.
MOTION TO APPROVE R-12-212: MOVED BY MEMBER GOLINSKI, SECONDED BY MEMBER SCOLLANS
DISCUSSION: Councilwoman Smith thanked Mr. Ward for the report that he provided to her regarding the company that will be doing this work. She said that she feels it is important to know about the firms that we do business with. President Kuser asked Mrs. Smith what her conclusion is, after reviewing the report. Mrs. Smith replied that she is fine with this firm. Councilman Gabel added that he researched the firm and is also very comfortable with them.
AYES: GOLINSKI, SCOLLANS, GABEL, FITZPATRICK, SMITH, LYDEN, KUSER

It was determined that the minutes for 7-17-12 were not provided to the Council so they were removed from the Agenda.

R-12-213 RESOLUTION AUTHORIZING CLOSED SESSION FOR LAND ACQUISITION AND ATTORNEY CLIENT PRIVILEGE
President Kuser noted that he does not believe any action will be taken after the Closed Session. Attorney Jansen confirmed that there will not be any action taken.
MOTION TO APPROVE R-12-213: MOVED BY MEMBER SMITH, SECONDED BY MEMBER LYDEN
AYES: SMITH, GOLINSKI, GABEL, FITZPATRICK, LYDEN, SCOLLANS, KUSER
Council went into Closed Session at 9:19 p.m.
Council came out of Closed Session at 9:31 p.m.

MOTION TO ADJOURN: MOVED BY MEMBER GOLINSKI, SECONDED BY MEMBER SCOLLANS
AYES: UNANIMOUS
Meeting was adjourned at 9:32 p.m.

Respectfully submitted by:

Kathleen A. Costello, Deputy Township Clerk