The Meeting was called to order by President Kuser at 7:30 p.m. The Salute to the Flag was recited, followed by the reading of the Open Public Meetings Act Statement by Deputy Clerk Kathy Costello. Mrs. Costello noted that this is a non-smoking facility and asked that cell phones be muted or turned off.

ROLL CALL: ANDES, FITZPATRICK, GOLINSKI, SHAW, SMITH, STECKY, KUSER
ALSO IN ATTENDANCE: MAYOR HUSSA, ADMINISTRATOR WARD, TOWNSHIP ATTORNEY SEMRAU AND FACILITIES MANAGER CIARDI

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

DISCUSSION:
PROCEDURES FOR AWARD OF PROJECT DESIGN, SPECIFICATION DEVELOPMENT AND CONSTRUCTION SUPERVISION SERVICES

Administrator Ward noted that it had been his intention to provide the Council with recommendations, by way of a memo, but he has not had an opportunity to get to that. He said that he will do that shortly. Mr. Ward commented that, as Attorney Semrau indicated last week, there is no inherent conflict with the Township Engineer also being the engineer who designs and oversees construction projects. He noted that the recommendation that he would make for the future is that, if we have large scale, biddable projects, proposals be solicited from various engineering firms. Mr. Ward added that the proposals should be for both design and construction supervision services. He said that he does not think it would be in the interest of the Township to split the design and construction oversight services between two firms. Mr. Ward stated that, clearly, the person who designs the project would be more familiar than anyone with what the contractor is supposed to be doing out in the field. He said that individual would clearly be able to manage the contractor more effectively and avoid overruns and change orders. Mr. Ward further recommended that, prior to any construction project coming forward, a committee be formed, consisting of the Mayor, Administrator and whatever members the Council chooses, to interview the top three firms. He said that price obviously has to be a consideration but also, the quality of work and the confidence that we would have in them to design and oversee the project at hand. Mr. Ward again stated that he would be uncomfortable with separating the design and construction oversight. He added that he thinks that, going forward, we should have a procedure by which we actually do an interview when we are considering a large ticket item. Mr. Ward assured the Council that he will formalize his recommendations in the form of a memo as soon as possible.

Councilwoman Smith stated that Mr. Ward has gone above and beyond what she had intended with regard to this resolution. She said that she does not think we need to
conduct interviews because we know who the reputable firms are. Mrs. Smith added that, when it is a large scale project, the bid should be a reasonable amount. She said that her aim was more towards looking at securing bids, bringing three bids to the Council and indicating which one Administration would like to hire. Mrs. Smith noted that she is not implying that we should always go with the lowest bid but, with the one that we feel is most capable for the particular project. She commented that there needs to be a check and balance in play. Mrs. Smith disagreed with Mr. Ward’s opinion that the same firm should do the design an oversee the construction. She related a glaring error by the architect who designed her house which was discovered by the contractor who built it. Mrs. Smith commented that using the same firm for both may not always work out.

Councilman Shaw stated that he has a problem with the fact that our Consulting Engineer works for the firm that we are giving a contract to. He said that he really feels that we should get more than one bid on any large project. Mr. Shaw noted that there should be a procedure in place that requires us to look at everyone.

Councilman Stecky stated that he is familiar with the way things are done and, the way Mr. Ward expressed it is generally the case. He said that using the same firm for design and construction supervision is typical. Mr. Stecky commented that there was a competitive process when the Council chose the Consulting Engineer. He said that a contract was signed that contained the labor rates and that was a preferred rate because we signed a contract with Hatch Mott.

Mr. Ward noted that all of the firms that were interviewed supplied proposals and they were all within $10 of each other.

Mr. Stecky said that his point is that there was a competitive process in place when Mr. Ruschke was hired and the Township contracted with Hatch Mott Macdonald for his services. He noted that we know we have a good hourly rate so the question would concern the rate for a lump sum project but, Mr. Ruschke has stated that it is not a lump sum project and has a “not to exceed clause”. Mr. Stecky commented that he thinks it would be a matter of opinion on the Council as to when they feel it would be necessary to seek proposals for a large project. He said that we actually have a good deal already for this project.

Councilman Andes stated that he thinks it is important that the Township makes sure that Hatch Mott has the opportunity to be in it. He said that, in this case, he would be more inclined to go with them than with the lowest bidder because of Mr. Ruschke’s expertise and knowledge of the area of the project. Mr. Andes commented that, as long as we match the right job with the right guy and are sure we are getting a fair deal, it is fine.

Councilman Golinski agreed with Mr. Shaw in that we need to do some double-checking and with Mr. Stecky that we did have a competitive process and got some good, favorable rates. He said that he believes that the Council has to give itself, and the public, the confidence that due diligence has been done in all decision making. Mr. Golinski stated that we should avoid any firm becoming complacent and assuming that,
because they have received previous contracts that they will automatically be awarded the next one. He suggested that the Council might give the Administrator a guideline as to what they consider a large project.
President Kuser asked if the policies will be in written form.
Mr. Ward replied that he will write up the policy but wanted to get the Council’s consensus this evening and it looks like everyone is pretty much on the same page. Mayor Hussa said that they have been very cognizant of the bid procedure. He commented that, from hearing the Council speak, it sounds like we are doing all things wrong, but that is not the case. The Mayor noted that there are procedures in place which Mr. Semrau oversees.

MOTION TO APPROVE R-11-202: MOVED BY MEMBER SMITH, SECONDED BY MEMBER GOLINSKI
Councilman Golinski asked what the other bids were. He said that he sees in the resolution that we received a competitive bid but asked what the other bids were. Administrator Ward replied that they were all within $2,000 to $3,000 of each other. He said that there was one bid that was in the $24,000 range but the delivery time was approximately twelve (12) weeks and the rental pump that is needed as a stop-gap is costing the township $2,000 per week.
AYES: SMITH, GOLINSKI, STECKY, SHAW, FITZPATRICK, ANDES, KUSER

R-11-203 RESOLUTION AUTHORIZING THE WAIVER OF FEES FOR POLICE SERVICES FOR THE ANNUAL ST. FRANCIS FALL FESTIVAL
MOTION TO APPROVE R-11-203: MOVED BY MEMBER SMITH, SECONDED BY MEMBER GOLINSKI
DISCUSSION: Councilman Golinski stated that he is concerned about the amount to be waived. He said that he does not want to micro-manage the Police Department, but it just seems to him that the fees seem extraordinarily high. He asked what the fees were that were waived for the Rotary Street Festival.
Mr. Ward replied that he does not have the figure with him but it was roughly half of this amount. Mr. Golinski commented that he finds it surprising that for an event where we closed four or five of our roadways, with a comparable number of people in attendance, the fees were considerably less. Mr. Golinski noted that the Fire Department Carnival ran for five nights and the fees were $4,300, or $800 per night, versus $5,000 for a one-day event. Mr. Golinski added that, last year, he complimented one of the officers for mingling with the youth at the Festival and stated that it could be a good opportunity for Community Policing, versus a need for protection for the event. He asked what a Police Utility Officer does for the day and wondered why that is being charged to the
event. Mr. Golinski suggested that perhaps things could be done differently. He noted that there are crossing guards outside of the schools every day and they do not receive top pay, or bring in our Parking Enforcement Officer to do crossing duty. Mr. Golinski asked, regardless of who is running the event, if they are responsible for Police outside of the boundaries of the event. He stated that, when he goes to Yankee Stadium, there are Police out there directing traffic and helping people cross the road and they don't send Yankee Stadium the bill. Mr. Golinski asked why we want to send St. Francis the bill for keeping the roadways safe.

Councilwoman Smith interjected that waiving the fees goes back a long time. She said that there was a policy in place whereby people had to apply to Administration for a fee waiver. Mrs. Smith noted that the policy has only lately been enforced. She suggested that Administration take another look at this and determine how the whole situation should be handled. Mrs. Smith added that, in this particular instance, she will support the resolution waiving the fees. She commented that St. Francis has announced that 50% of the proceeds from the Festival will go to the Hurricane Relief Fund plus they are donating an additional $10,000. Mrs. Smith said that they are contributing to the community and, by waiving these fees, we are contributing as well. She reiterated that she will support the resolution but thinks the whole policy should be reviewed.

The Mayor stated that they did look at the policy and went according to exactly what's on the books now and he doesn't think it needs to be looked at anymore.

Mrs. Smith replied that she thinks that the Council should look at the philosophy of it at a workshop.

President Kuser interjected that he thinks that Mrs. Smith is concerned more about how the Police fees are calculated.

Mrs. Smith advised that she applauds the Mayor for bringing up the fact that there is a policy on the books and added that she was not criticizing him. She said that she just feels that the entire policy and how it is put on the books should be looked at and President Kuser should schedule it for a workshop. Mrs. Smith added that she thinks we should move this resolution tonight, based on their generosity to the community. Mayor Hussa said that it is great that they are being very generous, however, they are not a non-profit and you can’t compare this with Rotary. He said that they are a for-profit organization.

Councilman Golinski interjected that it is clear that they are a 501C3 and the IRS determines whether they are profitable or not.

Councilman Andes also stated that they are a 501C3.

Mr. Golinski said “you can’t debate that”.

The Mayor replied that perhaps St. Francis, the Foundation, may be a non-profit. Mr. Andes responded, “No, St. Francis Health Resort/St. Francis Residential Community is a 501C3. Franciscan Oaks is not, and the hospital is not.” He said that St. Francis Health Resort and the Fall Festival Group is a 501C3.

The Mayor replied, “o.k. that’s a little different, I was under the impression that they were a for-profit organization.” The Mayor asked if Mr. Andes is saying that the
Foundation is a non-profit organization.
Mr. Andes replied that there is no Foundation; the Fall Festival Committee is a non-profit organization. Mr. Andes explained that the nuns run the St. Francis Health Resort for senior citizens, at affordable prices and they are a non-profit organization.
The Mayor asked Attorney Semrau if that is true.
Mr. Semrau replied that he thinks there are two entities, which Mr. Andes has just articulated, one being the non-profit, which is the applicant this evening. He said that is the one that sponsors the Festival.
The Mayor asked if someone applied last year for non-profit status and if so, who was it. Mr. Semrau replied that this entity is a non-profit organization. He said that it was a tax appeal and it has to do with Franciscan Oaks and that’s what he was referring to as separate and distinct from this entity. Mr. Semrau noted that Franciscan Oaks is an assisted and independent living facility which is separate and apart from St. Francis Health Resort.
The Mayor replied that he stands corrected, non-profit organizations should have some help. He said that he was under the impression that the receiving entity here was a for-profit organization. The Mayor asked why no one has corrected him on this, because this is what he has been saying all along.
Councilman Stecky commented that the Council went through this last year and he is surprised to find out that they are non-profit. He said that if the everyone had been made aware of this last year the discussion probably would not have happened.
Mrs. Smith noted that the funds that were raised last year were used to replace the fire suppression system at St. Francis Health Resort and this year they are to replace a faulty elevator.
Councilman Fitzpatrick stated that it is clear that this is a non-profit group and they are donating a considerable amount back to the community, which is in great need right now. He said that, adding to Councilman Golinski’s concerns, he supports waiving the overtime fees but is also concerned with the price. Mr. Fitzpatrick noted that the Police do a great job but the fees do seem a bit high, especially in light of Mr. Ward’s memo advising the Council of the financial burden the Township has incurred from this storm due to overtime. Mr. Fitzpatrick wondered if it would be possible to ask the Chief to keep the costs under a certain cap. He said that it is the Chief’s discretion and, if something unusual occurred, that would change things but maybe he could tighten it up.
Mrs. Smith advised that the fees are determined by the officers and the pay scale that they are on. She said that it is the Chief’s decision as to who works overtime.
Mr. Ward interjected that it depends on the schedule and what officers are working on that day.
Mrs. Smith said that, as Mr. Golinski suggested, maybe officers who are at a lower pay scale could be utilized.
Mr. Andes noted that it was determined that there was more police presence than Township Council
was needed last year. He said that this year, weather permitting, it is expected to be a bigger event, particularly because of the proposed donation of one-half the proceeds going to flood relief for the downtown businesses. Mr. Andes stated that it appears to the Council, from their vantage point, that there are too many policemen but, he feels that we should err on the side of safety. Councilman Shaw commented that he ran many of these events for many years and never had Council interference concerning the number of personnel he needed. He said that he understands the savings between superior officers and regular patrolmen but, the Council should not try to tell the Chief how to run his Department. Mr. Shaw noted that Department Heads know what they need and we should leave it at that. He said that, if the price is too high, don’t let the organizations hold the events. Councilman Stecky commented that a number of Township employees volunteered their time last year and he presumes that the PBA contract would not allow the Police to do the same. Mrs. Smith stated that they could volunteer, but not doing police work. Mr. Andes added that there were a lot of Township employees who volunteered their time, but not on a professional level. He said that he thinks that, as soon as a policeman puts on his bullet-proof vest, he wants to be paid. Mr. Andes added that he is sure that if Sister could have gotten volunteers, she would have. Attorney Semrau interjected that if a policeman were to volunteer his off duty hours and an incident were to occur, in which the officer was injured, he would not be covered by insurance. Councilman Golinski stated that he is still shocked at the cost of these fees but he does not intend to micro-manage the Police Department. Mr. Golinski noted that, at some point in time, he would like a clarification as to why St. Francis would be charged for Police services occurring outside of the geographic boundaries of their event. He commented that the roadways are the town’s job to keep safe and the cost should not be passed on to organizations holding these events. Attorney Semrau interjected that everyone should be applauded for doing this in an appropriate manner. He said that here we have a one-day event that is not necessarily permitted in that zone and all of the departments in town make sure that the public’s health and safety is protected. Mr. Semrau noted that all departments sign off on the application and, when it gets to the Police Chief, he decides on what staff will be needed for public safety. He added that, if it goes beyond the borders of the event, it is still the responsibility of the event. Mr. Semrau said that it is a one day event and is not something that is already permitted in the zone and has a day-to-day activity. He noted that there is an event to be held that will cause additional police protection, the extent of which is at the discretion and recommendation of the Chief. Mr. Semrau added that everything was done appropriately and the Council can vote to waives the fee and everything is in tact, not just for this event, but for future ones as well. He said that if a non-profit comes in whose purpose is not necessarily a benefit to the Township, the Council can, based on past practice, decline waiving the fees. Township Council 9-13-11
Councilman Fitzpatrick advised that he will support the resolution and added that the Council is doing its job by questioning the fees. He noted that the Chief may well be within his budget at the end of the year.

President Kuser commented that he wanted everyone to know that the original fees were much higher; they were "north of $7,000". He said that after several discussions with Mr. Ward and Mr. Semrau, the Chief knocked it down as much as he could. Mr. Kuser noted that the officers on the list are all in the $100K salary range but he has been told that it’s the rotation and that’s just the way it is. President Kuser said that he agrees with the Mayor in that we need to get an estimate when these events are being planned. He stated that he supports the Festival, noting that it brings a lot of people into Denville and they are donating a lot of money. Mr. Kuser advised that St. Francis pays $95,000 in taxes on two parcels and two others are tax-exempt. He said that they are good people and are good to Denville.

Mr. Andes interjected that it would be appropriate to mention that they rent Denville three (3) all-purpose fields for $1 per year. He added that Denville grew up around the St. Francis Health Resort since 1895. Mr. Andes said that it is not only an historic building, but a place where seniors can live out their days in a very comfortable place. Mayor Hussa noted that he still needs his clarification. He said that he sees that he does have an error in his memo of August 26, 2011. The Mayor advised that the error is that he said that the St. Francis Foundation is not a non-profit organization and he will publish a correction. He added that St. Francis Foundation is a non-profit organization however, St. Francis itself, he does not believe is a non-profit.

Councilman Golinski replied that St. Francis Residential Community is a non-profit. Mr. Andes added that they get raffle permits all the time, which the Council approves. The Mayor asked Mr. Semrau to verify this.

Attorney Semrau replied that it is his understanding that Franciscan Oaks is separate and apart and that may be where the confusion lies. St. Francis itself is a non-profit organization.

The Mayor stated that he would like to have the “Whereas” clause indicating that the waiving of the fees is not recommended stricken. He said that certainly a non-profit falls into a different category than a for-profit organization. Mayor Hussa noted that he was under the impression that St. Francis Health Resort was not a non-profit and that is his mistake.

Mrs. Smith asked if the Mayor would like to strike the reference to his memorandum, dated August 26th as well and just say he is recommending the waiver of the fees. The Mayor replied that he will correct his memo and Mr. Ward has stricken the word “against” so it will read “recommending the waiver of fees”. He also requested that everything after the word “overtime” be stricken as well.

Mrs. Smith stated that she had made the motion and accepts the changes.

ROLL CALL ON R-11-203, AS AMENDED: SMITH, GOLINSKI, STECKY, SHAW, FITZPATRICK, ANDES, KUSER

Township Council

9-13-11
R-11-204 RESOLUTION AUTHORIZING WAIVING CONSTRUCTION AND HEALTH FEES FOR FLOODED HOMES AND BUSINESSES IN DENVILLE
MOTION TO APPROVE R-11-204: MOVED BY MEMBER ANDES, SECONDED BY MEMBER GOLINSKI

Discussion: Councilman Andes asked if the resolution includes wind and water damage. Administrator Ward replied that the way the resolution is written is: “That all construction code permit fees required by Chapter 2A of the Denville Township Code are waived for all construction permits requested by property owners for repairs, reconstruction and/or restoration work required as a result of the damages caused by Tropical Storm Irene.” He added that it is not just flooding, it is trees down, wind damage or anything of that nature, causing a homeowner to attempt to restore the property to its original condition. Mrs. Smith asked if the resolution should also include the second storm. She said that she wonders if we should encompass all of the storms, because some damage occurred subsequent to the hurricane. Mr. Ward replied that the State Office of Emergency Management is recognizing Tropical Storm Irene and Tropical Storm Lee. He said that we could add Lee and that would cover the period up until the 9th. Mrs. Smith noted that it may take people more than 60 days to obtain quotes and hire contractors in order to apply for a permit. She suggested that the 60 days either be extended or a sentence be added to the resolution allowing an additional 60 day period. Mr. Semrau replied that, in his discussions with the Administrator and Construction Official, it was determined that it should be limited to a reasonable amount of time. He explained that the rationale was that, when other applications come in for non-storm related repairs, there would be no need for sorting out one from the other. Mr. Semrau expressed his opinion that there should be a cut-off because the resolution is actually the temporary suspension of the payment of fees. Attorney Semrau advised that the Council could either bring the resolution back after 45 days with a status report and determine if there are any concerns or, if the program is working effectively, just give the Administrator the right to extend this for another 30 days. Mrs. Smith said that she just does not think it’s enough time for some people to get through the permitting process. Mr. Semrau noted that this resolution runs through November 13th. Mr. Andes interjected that he must agree with Mrs. Smith on this. He said that as he has met people at the dinners in the evening, he has come to see that there are people who are very aggressive, are fixing their homes and paying for it and then there are those who are well behind the curve. Mr. Andes advised that he was at a woman’s house on Saturday who had just now asked for help in cleaning out her basement. He said that if that woman has damage to her home, she will never make the 60 day limit for obtaining permits. Mr. Andes commented that he likes the idea of giving Mr. Ward
the latitude to extend the time limit for an additional 30 days. Mrs. Smith said that she would make it 60 days. Mr. Stecky suggested an extension based on request. Mr. Andes said that we should have a record of which homes were damaged. Mr. Ward advised that there will be a house by house comprehensive list of homes that were damaged. Mr. Andes stated that he feels that we should give the Administrator the latitude to grant extensions as he sees fit and he is fine with that extension being either 30 or 60 days. Mr. Kuser recommended that the resolution be amended to read “90 days from the date of the storm” because some people have already paid for permits and should have their fee refunded. Mr. Ward advised that, as of Friday, twelve (12) permits have been issued and they have been tracking it because if this is adopted, the intention was to refund the fees. Mr. Kuser again noted that he would like to have the resolution amended to read 90 days from the date of the storm and add that the Administrator has the authority to waive additional fees, if necessary. Mr. Ward agreed but recommended that it be for an additional 30 or 60 days, as was suggested by some of the council members. Mrs. Smith suggested 90 days from the date of the storm and an additional 60 days, at the discretion of the Administrator. Mr. Fitzpatrick commented that immediately after the storm, at the shelter, he had been speaking with the Administrator and some of the other Council members and this was something that they intended to do, right from the beginning. He said that, unfortunately, it is an election year and there are people who will attempt to make this a political issue and he would like to keep politics out of this. Mr. Fitzpatrick noted that it is clearly something that the Council always intended to do. Attorney Semrau summarized the amendments as follows:   Paragraph 1: “damages caused by Tropical Storms Irene and Lee”   Paragraph 4: “the waiver period shall be for a term of 90 days from the date of the storm”   Paragraph 5: “The administrator may extend the term of this resolution for an additional 60 days.” It was noted that the original Paragraph 5 will now become Paragraph 6. Councilman Golinski noted that, on the Agenda, the Resolution reads, “FOR FLOODED HOMES AND BUSINESSES WITHOUT FLOOD INSURANCE”. President Kuser replied that he did not read that portion when he read the resolution. Attorney Semrau explained that the purpose of the Agenda is to give notice as to the sub-topic that will be discussed. He said that this is the formal action. ROLL CALL ON R-11-204, AS AMENDED. AYES: ANDES, GOLINSKI, STECKY, SHAW, SMITH, FITZPATRICK, KUSER

R-11-205 RESOLUTION TO GO INTO CLOSED SESSION REGARDING Township Council 9-13-11 Page 10
POTENTIAL LITIGATION

MOTION TO APPROVE R-11-205: MOVED BY MEMBER SMITH, SECONDED BY MEMBER FITZPATRICK
AYES: SMITH, FITZPATRICK, GOLINSKI, STECKY, SHAW, ANDES, KUSER

President Kuser asked Mr. Ward if he had a general statement to put on the record as to what the potential litigation involves. Mr. Ward asked if he and Attorney Semrau might have a brief private discussion. Upon his return to the dias, Attorney Semrau advised that the discussion will pertain to matters concerning the Health Department. Councilwoman Smith asked if any action will be taken after the Closed Session. Mr. Ward responded that none will be taken, the discussion is informational in nature.

Council went into Closed Session at 8:24 p.m. Council came out of Closed Session at 8:57 p.m.

MOTION TO ADJOURN: MOVED BY MEMBER SMITH, SECONDED BY MEMBER FITZPATRICK
AYES: UNANIMOUS

MEETING ADJOURNED AT 8:58 P.M.

Respectfully submitted:

Kathleen A. Costello
Deputy Township Clerk