

MINUTES OF A REGULAR MEETING OF THE MAYOR AND COUNCIL OF THE BOROUGH OF MADISON

May 14, 2007 - 6:00 p.m.

Call to Order

The Regular Meeting of the Mayor and Council of the Borough of Madison was held on the 14th day of May 2007. Mayor Kerkeslager called the meeting to order at 6:00 p.m. in the Committee Room of the Hartley Dodge Memorial, Kings Road, in the Borough of Madison.

Statement in Compliance with the Open Public Meetings Act

The Borough Clerk read the statement pursuant to the Open Public Meetings Act:

"In compliance with the Open Public Meetings Act, adequate notice of this meeting of the Council was provided by publishing a copy of the meeting notice in the Madison Eagle and Morris County Daily Record, posting a copy on the bulletin board at the main entrance of the Hartley Dodge Memorial, and filing a copy in the office of the Clerk, all on January 4, 2007. Notice of change in time to 6 p.m. was published in the Daily Record on May 12, 2007 and was transmitted to the Madison Eagle, Independent Press and Star Ledger, all on May 10, 2007. Copies of said Notice were made available to members of the general public."

Roll Call

The Borough Clerk called the roll and the following acknowledged their presence:

Mayor Ellwood R. Kerkeslager

Council Members:

Mary-Anna Holden

Astri J. Baillie

Donald J. Bowen, arrived at 6:55 p.m.

Carmela Vitale

John M. Elias

Robert H. Conley

Also Present:

Raymond M. Codey, Acting Administrator

Joseph Mezzacca, Jr., Borough Attorney

Marilyn Schaefer, Borough Clerk

AGENDA REVIEW

Two Personnel Matters, one Contract Matter and one Litigation Matter were added to the Executive Agenda.

Reading of Closed Session Resolution

Mr. Elias moved:

RESOLVED, that the meeting be adjourned to an Executive Session to consider the following matters:

EXECUTIVE SESSION MINUTES (1)

Date of public disclosure 60 days after conclusion, if disclosure required.

PERSONNEL MATTERS (2)

Date of public disclosure 90 days after conclusion, if disclosure required.

CONTRACT MATTERS (5)

Date of public disclosure 60 days after conclusion, if disclosure required.

LITIGATION MATTERS (3)

Date of public disclosure 60 days after conclusion, if disclosure required.

Seconded: Mrs. Vitale

Vote: Unanimous voice vote of members present

Reconvene in Council Chamber

Mayor Ellwood R. Kerkeslager reconvened the Regular Meeting at 7:50 p.m. in the Council Chamber with all members present. The Pledge of Allegiance was recited by all.

APPROVAL OF MINUTES

Ms. Baillie moved approval of the **Regular Meeting Minutes of April 23, 2007**. Mrs. Vitale seconded the motion, which passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

The **Executive Minutes of April 23, 2007**, were approved by unanimous voice vote.

GREETINGS TO PUBLIC

Mayor Kerkeslager read the following Proclamation:

P r o c l a m a t i o n
of the
B o r o u g h o f M a d i s o n
Proclaiming
MYASTHENIA GRAVIS AWARENESS MONTH
JUNE 2007

WHEREAS, Myasthenia Gravis is a neuromuscular disease striking children and adults, affecting control of the voluntary muscles and afflicting several hundred of our fellow New Jerseyans; and

WHEREAS, the symptoms of this disorder include, but are not limited to, difficulty moving, breathing, swallowing, speaking and seeing; and

WHEREAS, the Myasthenia Gravis Foundation, Inc. is a non-profit organization founded "to facilitate the timely diagnosis and optimal care of individuals affected by myasthenia gravis and closely related disorders, and to improve their lives through programs of patient services, public information, medical research, professional education, advocacy, and patient care"; and

WHEREAS, Myasthenia Gravis is the most common neuromuscular disorder affecting the residents of New Jersey; and

WHEREAS, it is fitting to recognize the many physicians who demonstrate an untiring effort to treat this disease and search for a cure;

NOW, THEREFORE, I, Ellwood R. Kerkeslager, Mayor of the Borough of Madison, on behalf of the governing body, do hereby proclaim the month of **June 2007** as **MYASTHENIA GRAVIS AWARENESS MONTH** in the Borough of Madison and urge all residents to join with me in an attempt to focus attention

on the need for education, treatment, research, and, ultimately, an end to this, as yet, incurable disease.

Ellwood R. Kerkeslager, Mayor

May 14, 2007

Certificates of Achievement

Mayor Kerkeslager asked the Madison Physics Club students in attendance to step forward to be presented Certificates of Achievement.

C E R T I F I C A T E O F A C H I E V E M E N T

First Place Physics Olympics

Sponsored by the New Jersey Section of the
American Association of Physics Teachers

May 14, 2007

Presented to:

Jenny Bayard

Jason Benensky

Megan Blewett

Bryan Chen

Erin Crowley

Mike Holm

Kaitlin Janne

Inkoo Kang

Yuqing Meng

Seung Leal Brian Paek

Charlie Powell

Deric Raymond

Courtney Rowe

Connor Smith

Katherine Terracciano

Max Watson

Doug Willis

In recognition of the dedication, time and effort put forth by members of the Madison High School Physics Team, I, Ellwood R. Kerkeslager, Mayor of the Borough of Madison, hereby recognize the outstanding projects developed by this team of students from Grades 9 through 12 who worked more than 200 hours together to develop complex projects in each of the following areas: Wind Power Lifter, Egg Drop, Bernouilli Ball, Roller Coaster, Barge Building, and Fermi Questions. Awarded by the New Jersey Section of the American Association of Physics Teachers at its annual statewide Physics Olympics at Monmouth Regional High School, the MHS physics team was selected among 40 teams as they garnered a combination of awards from the six project areas granting them First Place in the competition. On behalf of the Borough of Madison, I extend congratulations to the MHS teachers and students for the perseverance and commitment required to achieve this level of excellence.

Ellwood R. Kerkeslager, Mayor

Mayor Kerkeslager read and presented the following Proclamation:

P r o c l a m a t i o n

of the

Borough of Madison

Proclaiming

Megan Blewett Day

May 14, 2007

Whereas, Megan Blewett, a senior at Madison High School, is the proud recipient of the \$20,000 Intel Science Talent Search (STS) scholarship, a prestigious award that encompasses all disciplines of science and is presented annually to high school students who are among the brightest minds in the United States and are evaluated on their research ability, scientific originality and creative thinking by top scientists in their respective fields; and

Whereas, Megan Blewett's love of science and research was confirmed at a young age when in sixth grade she requested a neuroscience textbook as a Christmas gift, and by eighth grade she had begun significant research in her multi-year effort in learning about biochemical reactions and geographic factors contributing to the onset of multiple sclerosis and amyotrophic lateral sclerosis (ALS), diseases for which she hopes some day to determine cause and cure; and

Whereas, Megan Blewett was selected as a semifinalist in the original contest that included high school student from 46 states and 487 schools; she then went on to the final competition and was selected^{7th} out of 1,700 contestants and is the first student in the history of Madison High School to receive this award, which in the history of the Intel STS included an equal number of female and male students for consideration, with six females out of the top 10 finalists as recipients, an achievement praised by the field and applauded by Megan; and

Whereas, When Megan Blewett subsequently entered the National Young Epidemiology Scholarship competition, a competition intended to spur students' interest in public health research, she faced 700 other contestants and 60 finalists, and won the top prize of a \$50,000 scholarship from the sponsor Robert Wood Johnson Foundation; and

Whereas, Megan Blewett effectively and naturally represents the value, excitement and personal benefits of pursuing an education and career in science, engineering and mathematics as a role model for students; and

Whereas, Megan Blewett is a self-motivated, creative and active student who participates in varsity tennis, plays in a flute orchestra, studies Mandarin Chinese, and has achieved a brown belt in karate:

Now, therefore, I Ellwood R. Kerkeslager, Mayor of the Borough of Madison, join in commending and

congratulating Megan Blewett for her outstanding achievements in receiving the Intel Science Talent Search Award, also known as the "Junior Nobel Prize" and the National Young Epidemiology scholarship. In so doing, I proclaim May 14, 2007 as **Megan Blewett Day** and I extend best wishes and success to Megan as she prepares for college and continued work in her field of research.

Ellwood R. Kerkeslager, Mayor

May 14, 2007

REPORTS OF COMMITTEES

Community Affairs

Mrs. Holden, Chair of the Committee made the following comments:

Congratulations

Mrs. Holden gave congratulations to the Madison Board of Education on the May 10, 2007 groundbreaking assembly and ceremony at the Madison Junior School. She congratulated the Madison High School girls' track and field team for the "Lady Dodgers" first crown since 1985; congratulations were also given to the Madison boys' lacrosse team for their performance in making their way to the Morris County Tournament finals. Mrs. Holden gave thanks for the support for the successful Project Community Pride Run sponsored by Wyeth; the 5K run was held last week.

Memorial Day Parade

May 28th will be the Memorial Day Parade in Madison; at a Madison Rotary breakfast lecture last week, a committee was formed to locate active duty personnel and their families; Mrs. Holden contacted Madison's Patriotic Celebrations/Veterans Affairs Coordinators, and "Operation Hometown Madison" was launched; all active duty servicemen and women from Madison are being sought; "Operation Hometown Madison" is eager to learn who from Madison is serving our nation; they will attempt to find the names and get mailing and email addresses; there is no central clearinghouse nationally. Mrs. Holden commented that they will be thanked for giving so much to our nation; they will be asked what they want or might need, and the organization will find a way to provide it to them.

Former Mayor Jack Dunne, a Korean War Veteran himself, will be present on Monday, May 28, 2007, to assist with the celebration and help register family and friends at James Park.

Utilities

Ms. Baillie, Chair of the Committee, made the following comments:

Electric Purchased Power Contract

Ms. Baillie reported on the wholesale purchased power contract which the Borough of Madison just entered into with seven other towns that are a part of the consortium; the contract is an increase of 105% over the Borough's last contract; however, the Borough's price for electricity will still be under the charge to JCP&L customers and PSE&G customers. Madison residents still will receive better service at a better price.

Health & Public Assistance

Mr. Bowen, Chair of the Committee, gave his personal thanks to the volunteers at Madison's May Day.

Public Works and Engineering

Mrs. Vitale, Chair of the Committee, no report.

Finance and Borough Clerk

Mr. Elias, Chair of the Committee, thanked and commended Mr. Conley for a particularly poignant letter which was published last Thursday in the Madison Eagle on the occasion of Mother's Day.

Public Safety

Mr. Conley, Chair of the Committee, made the following comments:

Safe Pace for a Safe Place

Regarding Traffic Calming, on May Day a "Safe Pace for a Safe Place" campaign was rolled out; residents are being asked to sign a pledge noting all the things to make Madison a much safer place; copies of the pledge will be distributed at the schools; through Mrs. Holder's help, Madison Honda will sponsor the campaign—a magnetic sign will be designed to put in cars noting that the driver is driving slowly to protect the children of Madison; they are also sponsoring the signs that say "Keep Kids Alive, Drive 25".

COMMUNICATIONS AND PETITIONS

The Borough Clerk announced receipt of the following communications:

1. From **Jennifer McDermott** requesting a traffic light on Rosedale Avenue; this communication is being handled by the Traffic Calming Committee and added to their May meeting agenda.
2. From **James & Mary Ellen Greene** regarding Woodcliff Drive road conditions and drainage problems, and enclosing their letter and petition dated October 24, 2005, concerning a very serious drainage problem on their street, which has not yet been remedied; this information has been forwarded to the Borough Engineer.
3. From **Peter E. Raneri** of Central Avenue voicing concern of on-going parking of commercial vehicles on residential properties in Madison; Mr. Raneri was sent that portion of the ordinance regarding parking.

4. From **Neil Cavazza and Jay Healy** in reference to curbing, drainage and traffic problems for Douglas Avenue, James Place, Strickland Place and Drew Place, and asking to hear from the Borough on these matters.

5. From **Peter Roger, President of the Madison Soccer Club**, regarding support for artificial turf fields this year.

Employee of the Month

Vivian Gil, Assistant Director of the Madison Teen Center, has been selected as Employee of the Month for May. In making the selection, the Committee was impressed with her outstanding performance in serving the teens as a role model and creatively bringing them and their parents into many aspects of the community.

Invitation for Discussion by the Public

Mayor Kerkeslager opened the meeting to the public for their opportunity to ask questions and make comments. Mayor Kerkeslager asked that, upon recognition by the Chair, the person shall proceed to the lectern and give his/her name and address in an audible tone of voice, and print the same on the sheet provided for the record. He/she shall limit his/her statement to five (5) minutes or less.

Paul Lozier, Chelsea Court, in detailed comments, continued to have questions about the Borough's finances and, in particular, the budget and tax increases in this year's budget; he spoke about the 2005 financial statements which showed the Borough had \$36 million in cash; he said the money belongs to the taxpayers and wondered why the Borough does not use these funds for other Borough purposes; he asked that the unnecessary hoarding of cash by the Borough be stopped and gave instances of where he recommended the funds be spent.

Sam Cerciello, Park Avenue, was very interested in what Mr. Lozier said; asked what is going on with the Fire & Police building and commented on his understanding that the Borough has a lot of problems there; the taxpayers are paying the bill; asked how the construction problems of the Fire & Police building have come to this point when the Borough hired Gilbane to oversee the construction.

Jerry Veza, Wisteria Court on the Board of Directors of the Madison Arts and Culture Alliance (MACA), underscored MACA's interest in the Green Village Road (GVR) School property; Mr. Veza spoke of the Board of Education's deadline of June 1, 2007; MACA has formed a new board that would take control and run the building; they have gotten Mr. Todd Rechler of RexCorp to be President of that board and met with him at his office in Short Hills two weeks ago; Mr. Rechler feels there is no better use of the GVR building than as an art and education center; MACA will not add a tax burden to anyone in the town and commented that this proposed center will improve revenue to the Borough; Mr. Veza invited the Council to make a decision.

Robert Conley was recognized by the Chair and commented that in order to respond to the Board of Education letter, Council did discuss this as a Contract Matter and further commented that the property was offered to the Borough with restrictions, which was not acceptable; Council wants to discuss occupancy by the Board of Education of the west wing of the Hartley Dodge Memorial and the GVR

property, and wants to deal directly with them.

Mr. Mezzacca was recognized by the Chair and commented that discussions can't go much further until Borough officials speak directly with the Board of Education.

Sarah Mercuri, Main Street, a member of the Eastern Business District Committee of the Downtown Development Commission, hoped that the development in Madison would be smart and green in consideration of the global warming problem. Ms. Mercuri spoke of a survey where people were asked what they liked and didn't like about the Madison area; the response spoke of beauty of landscaping at certain locations and they wanted their part of town to look like the rest of town. Another comment was about traffic; there is a huge issue as to safety near Niles Avenue; it is very dangerous if you live on Main Street; Ms. Mercuri asked that something be done regarding safety.

Martin Barbato, Arlena Court, spoke about the proposed tax increase and made specific recommendations as to the \$1.4 million tax increase; the reserve for uncollected taxes is based upon a collectable rate of 97% when Madison's actual experience is 99% to 100%; each percentage point is \$500M; the Borough should hold no more than three months of municipal expense; the Borough is the bill collector for the Board of Education, not their treasurer, and should base the Borough's cash management on that; the Borough should hold about \$5 million not \$35 million; the Borough should adopt a policy that if a project is not started in one year, funds should be returned to the taxpayers; if the Borough can release the money that is on the balance sheet into the best use for taxpayers, the Borough could dedicate it to capital purchases - it may be a way to use cash surpluses. Council can still do it this year.

Debra Starker, Beverly Road, spoke about Council's decision regarding the Board of Education offer. Mr. Mezzacca responded that the Borough discussed the letter and wants to have a meeting to discuss the offer and use of the Hartley Dodge Memorial. Council could not accept the letter as written with the restrictions and terms, and wants to have a discussion on that.

Mr. Elias was recognized by the Chair and commented in detail including that he personally found the Board of Education proposal to be lacking; was not aware of any Board of Education meeting at which the public had an opportunity to comment on the Board of Education recommendation regarding the Green Village Road School property; believed there is a significant price tag associated with the Borough assuming ownership of the property and gave his reasons; expressed his view that the GVR School may be a one-time opportunity to generate significant one-time dollars on a sale and an opportunity to generate revenues for the tax base; there is no compensating revenue stream to the Borough of Madison if the Borough were simply to assume ownership of that building and continue it as an educational or cultural center; one of the missions of the committee reviewing the property was to find a financially sound resolution to disposal of the property. Mr. Elias expressed that he is not in favor of accepting the property with restrictions; he is strongly supportive of continuing a dialogue regarding the GVR School.

Debra Starker, Beverly Road, commented that there is a possibility MACA could engage in looking at this building directly with the Board of Education.

Eugene Zipper, Greenwood Avenue, was pleased to hear what Mr. Elias had to say; reminded listeners that successive Boards of Education have not used the site as a school; thinks Madison has enough arts; as to MACA saying it will not cost the Borough any tax dollars, what about the loss in tax dollars-tax revenue to the Borough?

Marty Horn, West Lane, voiced support for the recommendation to fund turf fields made by the Recreation Advisory Committee, which voted unanimously to put two turf fields in town; commented that he hopes Council puts in place funding this year for two turf fields and that there are various sources of funding including the Open Space Fund.

Dave Carver, Belleau Avenue, a resident since 1992, spoke in favor of transferring ownership of the GVR School to the Borough; spoke of the Borough softball program, which has continued to use the GVR fields for the last two years; commented that uncertainty prevents making a commitment to improvements to the GVR fields and for moving forward.

Jim McCloskey, Dean Street recommended putting the invitation for discussion after the work session. As to the request for installing turf fields in Madison, asked when are we going to stop; eventually we won't be able to live here because of the taxes; commented that Rosedale Field was done with a lot of contributions; was not pleased that a light is not shining on the flagpole; as to turf fields, commented that getting muddy is all part of the game.

Lisa Ellis, Brittin Street, Board of Education President, offered to set up a meeting and talk about this offer by the Board of Education to transfer the GVR School property to the Borough with restrictions and use of the Hartley Dodge Memorial space by the Board of Education; as to a timeline clarification, stated that the Board of Education did accept the Committee's recommendations regarding transfer of the GVR School at the July 26, 2005 public meeting.

Rob McCarter, Lorraine Road, representing the soccer community in Madison, commented that turfing the fields is essential; spoke of field space; from the soccer community perspective, they are fully behind the Dodge Field turfing concept; this is a two field approach; Mr. McCarter asked that the town approve Rosedale Field turfing as well as Dodge Field; both fields will be used for multi-sport use; in terms of funding, Open Space will support turf funding of fields.

INTRODUCTION OF THE 2007 BUDGET AND TAX RESOLUTION

[R 101-2007 Resolution of the Borough of Madison Adopting the 2007 Budget and Tax Resolution](#)

Mr. Elias moved adopting the 2007 Budget and Tax Resolution R 101-2007. Mrs. Vitale seconded the motion.

Chief Financial Officer Robert Kalafut was recognized by the Chair and was invited to comment on the budget; as to surplus, it was suggested that Mr. Kalafut ask the Borough auditor whether our reserves meet the best of accounting standards, which may quell some of the speaker's fears; Mr. Kalafut commented that there are no hard rules to abide by and that he will get a written second opinion from the auditor. In summary, comments included that the budget being presented is "setting the table" to move forward over the next four years; there were additional comments including how much the Borough

should be holding for uncollected taxes; in October and November every year, the Borough cancels the unused portions of previously adopted ordinances. Mr. Kalafut was complimented on his stewardship as the reason why the Borough has a AAA rating; compliments were also given to the Borough Administrator.

Mayor Kerkeslager invited members of the public to comment on the 2007 Budget and Tax Resolution. Since no member of the public wished to be heard, the invitation for discussion was closed.

The Borough Clerk read the motion on the table and announced the hearing date:

"The aforementioned budget and tax resolution was moved by Mr. Elias and seconded by Mrs. Vitale. The hearing date of June 11, 2007, is set in the 2nd Floor Council Chamber of the Hartley Dodge Memorial, Kings Road in the Borough of Madison, at a meeting scheduled to begin at 7:45 p.m., at which time and place the public will have an opportunity to be heard, and there will be consideration for final adoption; a copy of said Budget and Tax Resolution will be available in the office of the Clerk without charge up to and including the public hearing; a summary of the 2007 Budget and Tax Resolution will be published in the Madison Eagle.

The following roll call vote was recorded adopting the 2007 Budget and Tax Resolution:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

Mr. Kalafut commented that he will submit to the Mayor and Council a brief schedule containing information on the six funds, the cash and the explanation of where those cash sources are; also a document on surplus utilization in terms of dollars and percentages; in addition, he will submit a comparison including Millburn, Summit and Madison.

Mayor Kerkeslager again asked if any member of the public wished to be heard concerning the 2007 Budget and Tax Resolution. Since no member of the public wished to be heard, the invitation for discussion was closed.

Agenda Discussions

05/14/07-1 review FIRE/POLICE BUILDING capital project (RAV);

HDM RENOVATIONS (RAV); REVIEW OF RELOCATION AND RENOVATIONS

As directed by the Mayor and Council, last Monday Mr. Mezzacca notified the builder of the Fire & Police building that the contract was terminated; their bonding company was notified; on Wednesday there was a meeting; the bonding company is now having their representatives review the building and investigate it further; there will be another meeting to discuss what they will do to get the building complete; the Borough has deducted certain amounts from the builder's vouchers for not completing the building on time.

Borough Engineer Robert Vogel commented as to the Hartley Dodge Memorial renovations; plans will

be in his office next week and ready to go by the next meeting; as to relocation, a third party may accommodate all employees with no need to do trailers; Mr.Codey has been working diligently on this relocation issue.

05/14/07-2 ZIMMERMAN REPORT

After detailed comments, Ms.Baillie recommended support for a gateway zone and getting in touch with Dave Zimmerman to ask him to prepare a draft ordinance within four weeks. Mr. Bowen seconded the motion, which passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms.Baillie , Mr. Bowen
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

05/14/07-3 CANCEL ORDINANCE 25-2007 at the Public Hearing for the following reasons: (1) Ordinance should have appropriated from the "General Fund Balance" not "General Capital Improvement Fund" and (2) the \$40,000.00 for the truck, listed in Ord 25-2007, was already appropriated by Ordinance 9-2007 and will be awarded under County Coop, no resolution of award needed.

INTRODUCE ORDINANCE APPROPRIATING \$18,000 FROM THE GENERAL FUND BALANCE for roof repair at butler building

INTRODUCE ORDINANCE APPROPRIATING \$10,000.00 FROM THE GENERAL FUND BALANCE to purchase sewer pumps

INTRODUCE ORDINANCE APPROPRIATING \$15,000.00 FROM THE GENERAL FUND BALANCE to purchase claw for loader

INTRODUCE ORDINANCE APPROPRIATING \$22,200.00 FROM GENERAL FUND BALANCE to design addition for Sewer Department at Borough Garage

There was unanimous voice vote approving Superintendent of Public Works David Maines' recommendations.

Four ordinances are listed for introduction later in the meeting.

05/14/07-4 appropriate \$15,000.00 FROM THE WATER DEPARTMENT CAPITAL IMPROVEMENT FUND TO MAKE REPAIRS AT 5 WATER WELLS

Mrs. Vitale moved approval of Superintendent of Public Works David Maines' recommendation to appropriate \$15,000.00 from the Water Department Capital Improvement Fund to make repairs at five water wells. Mr. Elias seconded the motion, which passed by unanimous voice vote.

An ordinance is listed for introduction later in the meeting.

05/14/07-5 capital improvement 2007 – request to increase capital budget \$11,000 for alarm monitoring system - \$46,000 is in 2006 Capital Budget for this purpose– introduce ordinance to appropriate

\$57,000.00 for alarm monitoring system

Mrs. Vitale moved approval of Police Chief Chirico's request to increase the Police Department capital budget by \$11,000.00 for purchase of an alarm monitoring system and to appropriate a total of \$57,000.00 for this purpose. Mr. Elias seconded the motion, which passed by unanimous voice vote.

An ordinance will be introduced at the May 30, 2007 meeting.

05/14/07-6 ADVERTISE FOR NEW ASSISTANT TEEN CENTER DIRECTOR

Mrs. Holden moved approval of Teen Center Director Ray Kalas' request to advertise for a new Assistant Teen Center Director. Mrs. Vitale seconded the motion, which passed with Mr. Bowen voting "Nay".

05/14/07-7

AUTHORIZE FINAL PAYMENT AND CHANGE ORDER REQUEST FROM CIFELLI & SON IN THE AMOUNT OF \$712,205.50 FOR THE GARFIELD AVENUE RECONSTRUCTION PHASE 1 & 2 CONSTRUCTION PROJECTS

AUTHORIZE ADVERTISEMENT FOR PART-TIME REPLACEMENT ELECTRIC SUBCODE OFFICIAL/ELECTRICAL INSPECTOR

AMEND ORDINANCE 41-2004 (APPROPRIATING \$180,000.00) TO APPROPRIATE AN ADDITIONAL \$20,000.00 TO COMPLETE THE SPRING GARDEN BROOK PROJECT

AWARD CONTRACT TO OMLAND ENGINEERING FOR DESIGN SERVICES FOR A PORTION OF WOODLAND ROAD IN THE AMOUNT NOT TO EXCEED \$54,700.00

APPROPRIATE \$40,000 FROM THE GENERAL CAPITAL IMPROVEMENT FUND FOR DESIGN DRAINAGE IMPROVEMENTS ON GREEN VILLAGE ROAD, funds from ord 17-2007

APPROPRIATE \$38,000.00 FROM GENERAL CAPITAL IMPROVEMENT FUND FOR FLOW MONITORING STUDY OF NORTH STREET SERVICE AREA, funds in 2007 capital budget

AMEND PROFESSIONAL SERVICES contract FOR EXTENDED CONSTRUCTION PHASE BY HOLT MORGAN RUSSELL FOR THE FIRE/POLICE BUILDING CONSTRUCTION IN AN AMOUNT NOT TO EXCEED \$80,694.00, funds from bond ordinance 42-2005

AUTHORIZE CONTRACT WITH ROSEN GROUP OF MADISON FOR ELEVATOR DESIGN AT THE CIVIC CENTER IN AN AMOUNT NOT TO EXCEED \$21,200.00, FUNDS FROM ORD 58-2005

AWARD CONTRACT TO ENVIRONMENTAL ENGINEERING CORPORATION OF MADISON, NJ FOR WELL SEARCH AND ALTERNATIVES STUDY IN THE AMOUNT OF \$2,450.00, FUNDS FROM ORDINANCE 1-2006

Added to Agenda - RELEASE PERFORMANCE BOND AND GUARANTEE TO PARISI BUILDERS FOR THE LOCATION OF GIBBONS PLACE MINOR SUBDIVISION ALSO KNOWN AS TAX MAP BLOCK 4305 LOTS 15, 15.01 & 17

Mrs. Vitale moved approval of all of the above recommendations of Borough Engineer Robert Vogel. Mr. Elias seconded the motion, which passed with the following roll call vote recorded:

Yeas: Mrs. Holden, as to #1 through #7 and #9 and #10

Ms. Baillie , as to #1 through #7 and #9 and #10

Mr. Bowen, as to #1 through #7 and #9 and #10

Mrs. Vitale, as to #1 through #7 and #9 and #10

Mr. Elias, as to #1 through #7 and #9 and #10

Mr. Conley, as to #1 through #7 and #9 and #10

Nays: Mrs. Holden, as to #8 authorizing contract with Rosen Group

Ms. Baillie , as to #8 authorizing contract with Rosen Group

Mr. Bowen, as to #8 authorizing contract with Rosen Group

Mrs. Vitale, as to #8 authorizing contract with Rosen Group

Mr. Elias, as to #8 authorizing contract with Rosen Group

Mr. Conley, as to #8 authorizing contract with Rosen Group

There was consensus that Mr. Vogel have the Rosen Group look at the best location for the elevator at the Civic Center and return to Council with a recommendation.

A resolution is listed on the Consent Agenda to release Performance Bond and Guarantee to Parisi Builders (recommendation #10); #1 through #7 and #9 will be listed for action on the next meeting agenda.

05/14/07-8 RESOLUTION IN SUPPORT OF THE RECOMMENDATIONS OF THE RECREATION ADVISORY COMMITTEE

There was unanimous approval of Mrs. Holden's recommendation to appoint Nino Coviello and Marty Horn as members of the Recreation Advisory Committee; Mayor Kerkeslager immediately appointed both and asked for Council confirmation; there was Council approval of the aforementioned

appointments with Mr. Bowen abstaining.

There was detailed discussion of the Recreation Advisory Committee recommendations, which included that artificial playing surfaces be installed, possibly at Dodge Field and at the Memorial Park soccer/lacrosse field; sources of possible funding were discussed in detail.

Mr. Conley moved that the agenda recommendation from the Recreation Advisory Committee to move forward the investigation of turfing of Dodge Field/Memorial Park, looking at reconfiguration of Dodge Field, finding of appropriate and acceptable financing, and bringing back of a formal proposal including notice to neighbors, etc., be approved. Mr. Elias seconded the motion. The following roll call vote was recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

A motion was unanimously adopted to extend the meeting beyond 11 p.m.

05/14/07-9 DOG AND CAT LICENSES – RAISE FEES

Mr. Bowen moved approval of Health Officer John Theese's recommendation to raise dog and cat license fees to be effective January 2008. Mrs. Holden seconded the motion, which passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

An ordinance will be listed for introduction on the next meeting agenda.

Advertised Hearings

The Clerk made the following statement

Ordinances scheduled for hearing tonight were submitted in writing at a Regular meeting of the Mayor and Council held on April 23, 2007, were introduced by title and passed on first reading, were published in the Madison Eagle and made available to members of the general public requesting same.

Mayor Kerkeslager called up Ordinances for second reading and asked the Clerk to read said ordinances by title:

AFTER THE PUBLIC HEARING, THE BELOW ORDINANCE WAS WITHDRAWN AND THE

ORDINANCE NUMBER RETIRED

ordinance 25-2007 Ordinance of the Borough of Madison appropriating \$105,200.00 from the General Fund BALANCE for purchase of sewer pumps, Ford truck, claw for loader and for design of addition for Sewer Department at the Borough Garage

Mayor Kerkeslager opened the hearing on the above ordinance and asked if anyone wished to be heard. Since no member of the public wished to be heard, the public hearing was closed.

Mrs. Vitale moved that Ordinance 25-2007, which the Clerk read by title, be withdrawn and the ordinance number retired, as the individual requests of the Public Works Department will be introduced as separate ordinances. The motion was seconded by Mr. Elias and carried with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

Mayor Kerkeslager declared the above ordinance withdrawn.

ORDINANCE 26-2007

ORDINANCE OF THE BOROUGH OF MADISON APPROPRIATING \$118,000.00 FROM THE GENERAL CAPITAL IMPROVEMENT FUND FOR ASSESSMENT OF HVAC, BATHROOM REPAIRS, NEW BOOK STACK, INTERIOR SIGNAGE, REUPHOLSTERING CHAIRS, DRAINAGE DITCH STABILIZATION DESIGN WORK, AND PARKING LOT REALIGNMENT AT THE MADISON PUBLIC LIBRARY

Mayor Kerkeslager opened the hearing on the above ordinance and asked if anyone wished to be heard. Since no member of the public wished to be heard, the public hearing was closed.

Mr. Elias moved that Ordinance 26-2007, which the Clerk read by title, be finally adopted. Mrs. Vitale seconded the motion. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

Mayor Kerkeslager declared the above ordinance adopted and finally passed and asked the Clerk to publish notice thereof in the newspaper and file the ordinance in accordance with the law.

ORDINANCE 27-2007

**ORDINANCE OF THE BOROUGH OF MADISON APPROPRIATING
\$20,000.00 FROM THE GENERAL CAPITAL IMPROVEMENT FUND TO
PROCEED WITH COMPLIANCE PROJECTS ASSOCIATED WITH THE
NJDEP MUNICIPAL STORMWATER PERMIT PROGRAM**

Mayor Kerkeslager opened the hearing on the above ordinance and asked if anyone wished to be heard. Since no member of the public wished to be heard, the public hearing was closed.

Mrs. Vitale moved that Ordinance 27-2007, which the Clerk read by title, be finally adopted. Mr. Elias seconded the motion. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

Mayor Kerkeslager declared the above ordinance adopted and finally passed and asked the Clerk to publish notice thereof in the newspaper and file the ordinance in accordance with the law.

Introduction of Ordinances

The Clerk made the following statement

The Ordinances scheduled for introduction and first reading tonight will have a hearing during the meeting of Wednesday, May 30, 2007, in the Council Chamber of the Hartley Dodge Memorial, Kings Road in the Borough of Madison at 7:45 p.m., or as soon thereafter as practical, for further consideration and final adoption, will be published in the Madison Eagle, be posted at the main entrance to the Hartley Dodge Memorial and be made available to members of the public requesting same, as required by law.

Mayor Kerkeslager called up Ordinances for first reading and asked the Clerk to read the ordinances by title.

ORDINANCE 28-2007

**ORDINANCE OF THE BOROUGH OF MADISON APPROPRIATING
\$15,000.00 FROM THE WATER CAPITAL IMPROVEMENT FUND TO MAKE
REPAIRS AT 5 WATER WELLS**

WHEREAS, the Superintendent of Public Works has recommended that the Borough appropriate \$15,000.00 from the Water Capital Improvement Fund to make repairs at five water wells; and

WHEREAS, the Director of Finance has attested to the availability of the funds in the Water Capital Improvement Fund in an amount not to exceed \$15,000.00 for this purpose; and

WHEREAS, the Borough Council has determined that the Borough should appropriate \$15,000.00 from the Water Capital Improvement Fund to make repairs at five water wells; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, as follows:

SECTION 1: The amount of \$15,000.00 is hereby appropriated from the Water Capital Improvement Fund to make repairs at five water wells.

SECTION 2: The budget of the Borough is hereby amended to conform with the provisions of this Ordinance.

SECTION 3: This Ordinance shall take effect as provided by law.

Mrs. Vitale moved that Ordinance 28-2007, which the Clerk read by title, be adopted. Mr. Elias seconded the motion. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

ORDINANCE 29-2007

ORDINANCE OF THE BOROUGH OF MADISON APPROPRIATING \$18,000.00 FROM THE GENERAL FUND BALANCE FOR ROOF REPAIR AT BUTLER BUILDING

WHEREAS, the Superintendent of Public Works has recommended that the Borough appropriate \$18,000.00 from the General Fund Balance for repair of the roof at the Butler building; and

WHEREAS, the Director of Finance has attested to the availability of the funds in the General Fund Balance in an amount not to exceed \$18,000.00 for this purpose; and

WHEREAS, the Borough Council has determined that the Borough should appropriate \$18,000.00 from the General Fund Balance for repair of the roof at the Butler building; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, as follows:

SECTION 1: The amount of \$18,000.00 is hereby appropriated from the General Fund Balance for repair of the roof at the Butler building.

SECTION 2: The budget of the Borough is hereby amended to conform with the provisions of this Ordinance.

SECTION 3: This Ordinance shall take effect as provided by law.

Mrs. Vitale moved that Ordinance 29-2007, which the Clerk read by title, be adopted. Mr. Elias seconded the motion. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

ORDINANCE 30-2007

ORDINANCE OF THE BOROUGH OF MADISON APPROPRIATING \$10,000.00 FROM THE GENERAL FUND BALANCE TO PURCHASE SEWER PUMPS

WHEREAS, the Superintendent of Public Works has recommended that the Borough appropriate \$10,000.00 from the General Fund Balance to purchase sewer pumps; and

WHEREAS, the Director of Finance has attested to the availability of the funds in the General Fund Balance in an amount not to exceed \$10,000.00 for this purpose; and

WHEREAS, the Borough Council has determined that the Borough should appropriate \$10,000.00 from the General Fund Balance to purchase sewer pumps; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, as follows:

SECTION 1: The amount of \$10,000.00 is hereby appropriated from the General Fund Balance to purchase sewer pumps.

SECTION 2: The budget of the Borough is hereby amended to conform with the provisions of this Ordinance.

SECTION 3: This Ordinance shall take effect as provided by law.

Mrs. Vitale moved that Ordinance 30-2007, which the Clerk read by title, be adopted. Mr. Elias seconded the motion. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

ORDINANCE 31-2007

**ORDINANCE OF THE BOROUGH OF MADISON APPROPRIATING
\$15,000.00 FROM THE GENERAL FUND BALANCE TO PURCHASE CLAW
FOR LOADER**

WHEREAS, the Superintendent of Public Works has recommended that the Borough appropriate \$15,000.00 from the General Fund Balance to purchase an attachment claw for the loader for leaf collection; and

WHEREAS, the Director of Finance has attested to the availability of the funds in the General Fund Balance in an amount not to exceed \$15,000.00 for this purpose; and

WHEREAS, the Borough Council has determined that the Borough should appropriate \$15,000.00 from the General Fund Balance to purchase an attachment claw for the loader for leaf collection; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, as follows:

SECTION 1: The amount of \$15,000.00 is hereby appropriated from the General Fund Balance to purchase an attachment claw for the loader for leaf collection.

SECTION 2: The budget of the Borough is hereby amended to conform with the provisions of this Ordinance.

SECTION 3: This Ordinance shall take effect as provided by law.

Mrs. Vitale moved that Ordinance 31-2007, which the Clerk read by title, be adopted. Mr. Elias seconded the motion. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

ORDINANCE 32-2007

**ORDINANCE OF THE BOROUGH OF MADISON APPROPRIATING
\$22,200.00 FROM THE GENERAL FUND BALANCE TO DESIGN ADDITION
FOR SEWER DEPARTMENT AT BOROUGH GARAGE**

WHEREAS, the Superintendent of Public Works has recommended that the Borough appropriate \$22,200.00 from the General Fund Balance to design an addition to the Borough Garage for the Sewer

Department; and

WHEREAS, the Director of Finance has attested to the availability of the funds in the General Fund Balance in an amount not to exceed \$22,200.00 for this purpose; and

WHEREAS, the Borough Council has determined that the Borough should appropriate \$22,200.00 from the General Fund Balance to design an addition to the Borough Garage for the Sewer Department; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, as follows:

SECTION 1: The amount of \$22,200.00 is hereby appropriated from the General Fund Balance to design an addition to the Borough Garage for the Sewer Department.

SECTION 2: The budget of the Borough is hereby amended to conform with the provisions of this Ordinance.

SECTION 3: This Ordinance shall take effect as provided by law.

Mrs. Vitale moved that Ordinance 32-2007, which the Clerk read by title, be adopted. Mr. Elias seconded the motion. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

ORDINANCE 33-2007

ORDINANCE OF THE BOROUGH OF MADISON AMENDING CHAPTER 147 OF THE BOROUGH CODE TO INCREASE THE FEE FOR A DUPLICATE TAX BILL TO \$5.00

WHEREAS, the Borough of Madison, Tax Collector has recommended that the fee for a duplicate tax bill be increased from \$3.00 to \$5.00 for each bill requested pursuant to N.J.S.A. 54:4-64; and

WHEREAS, the Council has determined to make such increase.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, as follows:

SECTION 1: Section 147-1 of the Borough Code entitled "Fees for Copies of Particular Records and Documents" is hereby amended as follows:

§147-1 (B) (1) Duplicate tax bills: \$5.00 each.

SECTION 2: This Ordinance shall take effect as provided by law.

Mr. Elias moved that Ordinance 33-2007, which the Clerk read by title, be adopted. Mrs. Vitale seconded the motion. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

ORDINANCE 34-2007

ORDINANCE OF THE BOROUGH OF MADISON AMENDING THE BOROUGH CODE TO INCLUDE CHAPTER 157 ENTITLED "SERVICE CHARGE FOR RETURNED CHECKS"

WHEREAS, the Borough Administrator has recommended that the Borough adopt an ordinance imposing a service charge of \$20.00 for any payment tendered to the Borough by a check or other written instrument that was returned for insufficient funds, pursuant to N.J.S.A. 40:5-18; and

WHEREAS, the Council has determined to adopt such an Ordinance. **NOW, THEREFORE, BE IT ORDAINED** by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, as follows:

SECTION 1: The Borough Code is amended to include Chapter 157 entitled "Service Charge for Returned Checks":

§157-1. In accordance with N.J.S.A. 40:5-18, a service charge of \$20.00 shall be added to any account owing to the Borough of Madison when payment is tendered by check or other written instrument which is returned for insufficient funds.

§157-2. Whenever an account owing to the Borough of Madison is for a tax or special assessment, the service charge authorized by Section 157-1 shall be included on any list of delinquent accounts which is prepared for the enforcement of the lien.

§157-3. Any service charge authorized by Section 157-1 shall be collected in the same manner prescribed by Law for the collection of the account for which the check or other written instrument was tendered. In addition, the governing body may require future payments to be tendered in cash or by certified or cashier's check.

SECTION 2: This Ordinance shall take effect as provided by law.

Mr. Elias moved that Ordinance 34-2007, which the Clerk read by title, be adopted. Mrs. Vitale seconded the motion. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

ORDINANCE 35-2007

ORDINANCE OF THE BOROUGH OF MADISON – CALENDAR YEAR 2007 – TO EXCEED THE MUNICIPAL BUDGET APPROPRIATION LIMITS AND TO ESTABLISH A CAP BANK IN ACCORDANCE WITH N.J.S.A. 40A: 4-45.14

WHEREAS, the Local Government Cap Law, N.J.S. 40A: 4-45.1 et seq., provides that in the preparation of its annual budget, a municipality shall limit any increase in said budget to 2.5% unless authorized by ordinance to increase it to 3.5% over the previous years final appropriations, subject to certain exceptions; and

WHEREAS, N.J.S.A. 40A: 4-45.15a provides that a municipality may, when authorized by ordinance, appropriate the difference between the amount of its actual final appropriation and the 3.5% percentage rate as an exception to its final appropriations in either of the next two succeeding years; and

WHEREAS, the Governing Body of the Borough of Madison in the County of Morris finds it advisable and necessary to increase its CY 2007 budget by up to 3.5% over the previous years final appropriations, in the interest of promoting the health, safety and welfare of the citizens; and

WHEREAS, the Governing Body hereby determines that a one percent increase in the budget for said year, amounting to \$149,062 in excess of the increase in final appropriations otherwise permitted by the Local Government Cap Law, is advisable and necessary; and,

WHEREAS, the Governing Body hereby determines that any amount authorized hereinabove that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years.

NOW THEREFORE BE IT ORDAINED by the Governing Body of the Borough of Madison, in the County of Morris, in the State of New Jersey, a majority of the full authorized membership of this governing body affirmatively concurring, that, in the CY 2007 budget year, the final appropriations of the Borough of Madison shall, in accordance with this ordinance and N.J.S.A. 40A: 4-45.14, be increased by 3.5%, amounting to \$521,718 and that the CY 2007 municipal budget for the Borough of Madison be approved and adopted in accordance with this ordinance; and

BE IT FURTHER ORDAINED, that any amount authorized hereinabove that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years; and

BE IT FURTHER ORDAINED, that a certified copy of this ordinance as introduced be filed with the

Director of the Division of Local Government Services within 5 days of introduction; and

BE IT FURTHER ORDAINED, that a certified copy of this ordinance upon adoption, with the recorded vote included thereon, be filed with said Director within 5 days after such adoption.

Mr. Elias moved that Ordinance 35-2007, which the Clerk read by title, be adopted. Mrs. Vitale seconded the motion. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

ORDINANCE 36-2007

ORDINANCE OF THE COUNCIL OF THE BOROUGH OF MADISON AMENDING CHAPTER 195 OF THE MADISON BOROUGH CODE ENTITLED "LAND DEVELOPMENT ORDINANCE OF THE BOROUGH OF MADISON" TO REPLACE ARTICLE VIII, ENTITLED "AFFORDABLE HOUSING DEVELOPMENT FEES"

WHEREAS, the Madison Planning Board recommended that the Madison Land Development Ordinance be amended to provide for the collection of affordable housing development fees in regard to eligible development projects within the Borough; and

WHEREAS, the Borough Council adopted Ordinance 19-2005 which was codified as Article VIII of the Madison Borough Code entitled "Affordable Housing Development Fees", Section 195-46; and

WHEREAS, Ordinance 19-2005 contained inconsistencies and did not fully comply with the provisions of N.J.A.C. 5:94-6.1 *et seq.*; and

WHEREAS, the Borough Attorney has recommended that the Borough adopt a replacement for Section 195-46 that will comply with the requirements of N.J.A.C. 5:94-6.1 *et seq.*, and that such Ordinance shall be submitted to the Council on Affordable Housing for their approval pursuant to law.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Madison, County of Morris, State of New Jersey that:

SECTION 1: Article VIII, Section 195-46 of the Borough Code, entitled "Affordable Housing Development Fees" be completely replaced with the following:

ARTICLE VIII

Affordable Housing Development Fees

Section 195-46: Affordable Housing Development Fees

A. Purpose.

(1) In *Holmdel Builder's Ass'n v. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, *N.J.S.A. 52:27D - 301, et seq.*, and the State Constitution subject to the Council On Affordable Housing's (COAH) rules. The purpose of this ordinance is to establish standards for the collection, maintenance and expenditure of development fees in accordance with COAH's rules. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low and moderate income housing. All fees collected shall be used for the express purpose as stated above and be administered by the Borough of Madison. This ordinance shall be interpreted within the framework of COAH's rules on development fees.

(2) The Borough of Madison ("Borough") Governing Body recognizes there is a need for low and moderate income housing in the Borough. This ordinance will enable the Borough to collect affordable housing development fees in connection with eligible development projects in the Borough to allow it to better meet the low and moderate income housing demands in the community.

B. Non-residential development fees.

(1) Developers of commercial development within the Borough shall pay a fee of two (2) percent of the appraised value on the document utilized for construction financing.

(2) When the Borough approves an increase in floor area pursuant to *N.J.S.A. 40:55D-70d(4)*, the Borough may assess a development fee of six (6) percent of the appraised value on the document utilized for construction financing on the additional floor area realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base floor area for the purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two-year period preceding the filing of the variance application.

(3) The imposition of development fees shall not be construed as a condition of preliminary or final site plan approval or as a stipulation included in a developers agreement for the purposes of calculating growth exclusions pursuant to *N.J.A.C. 5:94-2.4(a)5*.

C. Mixed-use development fees.

(1) Developers of mixed-use development within the Borough shall pay a fee of two (2) percent of the appraised value on the document utilized for construction financing. For purposes of this ordinance, mixed-use development shall be defined as the development of a tract of land, building, or structure with a variety of complementary and integrated uses, such as, but not limited to, residential, office, manufacturing, retail, public, or entertainment.

(2) When the Borough approves an increase in floor area pursuant to *N.J.S.A. 40:55D-70d(4)*, the Borough may assess a development fee of six (6) percent of the appraised value on the document utilized for construction financing on the additional floor

area realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base floor area for the purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two-year period preceding the filing of the variance application.

(3) The imposition of development fees shall not be construed as a condition of preliminary or final site plan approval or as a stipulation included in a developers agreement for the purposes of calculating growth exclusions pursuant to *N.J.A.C. 5:94-2.4(a)5*.

D. Residential development fees.

(1) Developers of new residential housing, which shall include any residential development on an existing lot on which a former residential structure was located, within the Borough shall pay a fee of one (1) percent of the coverage amount of the Home Owner Warranty document of a for-sale unit, or the cost of construction where the HOW Warranty does not apply for a non-rental unit, or the appraised value on the document utilized for construction financing for a rental unit, provided no increased density is permitted.

(2) When the Borough approves an increase in residential density pursuant to *N.J.S.A. 40:55D-70(d)(5)*, the Borough may impose a development fee of six (6) percent of the coverage amount on the Home Owners Warranty document for each additional for-sale unit, or the appraised value on the document utilized for construction financing for each additional rental unit. If the zone on a site has changed during the two-year period preceding the filing of such a variance application, the density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

(3) No fee shall be charged pursuant to this section for any addition or improvement to an existing residential structure, so long as such addition or improvement does not increase the value of the existing structure, as of the date hereof, by more than 50%.

E. Eligible exactions, ineligible exactions, and exemptions.

(1) Affordable housing developments shall be exempt from development fees. All other forms of new construction, unless otherwise excluded as set forth herein, are subject to development fees.

(2) The Borough shall impose and collect development fees when an existing structure is expanded or undergoes a change to a more intense use (except as otherwise set forth herein). The development fee to be imposed and collected shall be calculated based on the increase in the equalized assessed value of the improved structure.

(3) Developments that have received preliminary or final approval prior to the imposition of a development fee shall be exempt from development fees unless the developer seeks a substantial change in the approval.

F. Collection of development fees.

The Borough of Madison may collect up to fifty (50) percent of the development fee on any specific

development at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy

G. Contested development fees.

Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by the Borough. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned. If the development fees are retained by the Borough, the developer shall immediately reimburse the Borough for all costs incurred by the Borough in defending such challenge, including but not limited to all attorneys' fees and court costs.

H. Housing trust fund.

(1) All development fees shall be deposited in a separate, interest-bearing housing trust fund in a bank or other financial institution chosen by the Borough (the "Bank"). The Borough shall provide written authorization, in the form of a three-party escrow agreement between the municipality, the Bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in *N.J.A.C. 5:94-6.16(b)*. This authorization shall be submitted to COAH within seven (7) days from the opening of the trust fund account. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

(2) With the approval of COAH and of the Division of Local Government Services, the Borough may invest development fee revenue in a cash management fund, provided that the amount of money in the cash management fund that comprises the funds and income attributable to such funds shall at all times be identifiable. The Borough shall provide written authorization, in the form of a two-party escrow agreement between the municipality and COAH to permit COAH to direct the disbursement of development fees as provided for in *N.J.A.C. 5:94-6.16(b)*. This authorization shall be submitted to COAH within seven (7) days from the opening of the trust fund account. All interest attributable to such funds shall only be used on eligible affordable housing activities approved by COAH.

I. Use of development fees.

(1) The Borough may use revenues collected from development fees for any activity approved by COAH to address the municipal fair share. Such activities include, but are not limited to:

(a) Rehabilitation;

(b) New construction;

(c) Regional Contribution Agreements ("RCA"), as subject to the provisions of *N.J.A.C. 5:94-4.4(d)*;

(d) Elder Cottage Housing Opportunities;

- (e) Purchase of land for affordable housing;
- (f) Improvement of land to be used for affordable housing;
- (g) Purchase of housing;
- (h) Extensions or improvements of roads and infrastructure to affordable housing sites;
- (i) Financial assistance designed to increase affordability; or
- (j) Administration necessary for implementation of the Housing Element and Fair Share Plan.

(2) Funds shall not be expended to reimburse the Borough for past housing activities.

(3) After subtracting development fees collected to finance an RCA, a rehabilitation program, or a new construction project that are necessary to address the Borough's affordable housing obligation, the Borough shall use at least thirty (30) percent of the balance remaining to provide affordability assistance to low and moderate income households in affordable units included in the Borough's Fair Share Plan. The Borough shall use one-third (1/3) of the affordability assistance portion of development fees collected to provide affordability assistance to those households earning thirty (30) percent or less of median income by region.

(a) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, and rental assistance.

(b) Affordability assistance to households earning thirty (30) percent or less of median income may include buying down the cost of low income units in a municipal Fair Share Plan to make them affordable to households earning thirty (30) percent or less than median income.

(4) No more than twenty (20) percent of the revenues collected from development fees each year, exclusive of the fees used to fund an RCA, shall be expended on administration, including, but not limited to:

(a) Salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program;

(b) A Housing Element and Fair Share Plan; and/or

(c) An affirmative marketing program.

In the case of a rehabilitation program, no more than twenty (20) percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH monitoring requirements. Development fee administrative costs are calculated and may be expended at the end of

each year or upon receipt of the fees.

SECTION 2: This ordinance shall take effect as provided by law.

Mrs. Vitale moved that Ordinance 36-2007, which the Clerk read by title, be adopted. Mr. Elias seconded the motion. Mr. Mezzacca commented that Ordinance 36-2007 will be referred by the Clerk to the Planning Board asking for comments before the next meeting and hearing date of Wednesday, May 30, 2007. There was no further discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

Consent Agenda Resolutions

The Clerk made the following statement

Consent Agenda Resolutions will be enacted with a single motion; any Resolution requiring expenditure is supported by a Certification of Availability of Funds; any Resolution requiring discussion will be removed from the Consent Agenda; all Resolutions will be reflected in full in the minutes.

Mr. Elias moved the Consent Agenda. Mrs. Vitale seconded the motion. At the request of Mayor Kerkeslager, the Clerk read R 108-2007 through R 111-2007 by title.

There was no Council discussion, and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

R 102-2007

**RESOLUTION OF THE BOROUGH OF MADISON RETIRING PLENARY
RETAIL DISTRIBUTION LICENSE OF CTH INTERNATIONAL TRADE
CORPORATION**

WHEREAS, the Division of Alcoholic Beverage Control (the Division) has notified the Borough of Madison that the term of the last renewal of the retail distribution license of CTH International Trade Corporation #1417-44-014-005 was 7/01/2004 through 6/30/2005; and

WHEREAS, the Retail Distribution License of CTH International Trade Corporation became inactive on June 7, 2002 when the deli business located at 42 Main Street was sold; and

WHEREAS, no person-to-person transfer application has been filed since the sale of the business; and

WHEREAS, the Division has advised the Borough of Madison that the Governing Body is required to pass a resolution stating that the license has lapsed and ceased for failure to renew.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Borough of Madison in the County of Morris and State of New Jersey that the Plenary Retail Distribution License #1417-44-014-005 held by CTH International Trade Corporation has lapsed and ceased for failure to renew.

BE IT FURTHER RESOLVED, that a certified copy of this resolution be forwarded to Diane M. Weiss, State of New Jersey, Department of Law and Public Safety, Division of Alcoholic Beverage Control, P.O. Box 087, Trenton, NJ 08625-0087.

R 103 - 2007

**RESOLUTION OF THE BOROUGH OF MADISON APPROVING RAFFLES
LICENSE APPLICATION SUBMITTED BY ARTS COUNCIL OF THE MORRIS
AREA TO CONDUCT AN ON-PREMISES 50/50 RAFFLES GAME ON
SUNDAY, JUNE 24, 2007**

WHEREAS, N.J.S.A. 5:8-1 *et seq.* and N.J.A.C. 13:47-1.1 *et seq.* prohibit the conducting of games of chance on Sunday unless specifically authorized by a duly adopted municipal ordinance; and

WHEREAS, on March 8, 1982, the Council of the Borough of Madison adopted Ordinance No. 5-82 to allow the Council, by resolution, to permit qualified organizations to conduct games of chance on Sunday; and

WHEREAS, the New Jersey Legalized Games of Chance Control Commission has issued Registration Identification No. 274-5-34612 to the Arts Council of the Morris Area; and

WHEREAS, an Application for Raffles License, together with all necessary documents and fees, has been submitted to the Madison Borough Clerk's Office by the Arts Council of the Morris Area to conduct an On-Premises 50/50 Raffles Game on Sunday, June 24, 2007, at Giralda Farms, Madison Avenue, Madison (Rain Site: Madison High School, Ridgedale Avenue, Madison);

NOW, THEREFORE, BE IT RESOLVED by the Council of the Borough of Madison, County of Morris, State of New Jersey, that the afore-mentioned Application for Raffles License, R.A. No. 1049, to be held as listed above, be and the same is hereby approved.

BE IT FURTHER RESOLVED that a certified copy of this

Resolution be forwarded to the Legalized Games of Chance Control Commission.

R 104-2007

**RESOLUTION OF THE BOROUGH OF MADISON APPROVING THE ANNUAL
MADISON AREA YMCA 5K RUN ON SUNDAY, SEPTEMBER 9, 2007**

WHEREAS, the Madison Area YMCA has requested to hold a A5K run@ in Madison on Sunday, September 9, 2007; and

WHEREAS, the run will begin at 10:00 a.m., at the Madison Area YMCA soccer field on Keep Street on the route approved by the Madison Borough Police Chief, said route being approximately 3.2 miles long; and

WHEREAS, Police Chief Chirico recommends approval of this request.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Madison, County of Morris, State of New Jersey, that the request of the Madison Area YMCA to hold a "5K run" in Madison on Sunday, September 9, 2007, as described herein is hereby approved, subject to any safety requirements imposed by the Madison Police Department.

R 105-2007

**RESOLUTION OF THE BOROUGH OF MADISON RATIFYING APPROVAL OF
WYETH 5K RUN HELD ON THURSDAY, MAY 10, 2007**

WHEREAS, Wyeth requested approval to hold a A5K run@ in Madison to benefit Project Community Pride; and

WHEREAS, the run was held on the grounds of Giralda Farms on Thursday, May 10, 2007; and

WHEREAS, Police Chief Chirico recommends approval of this request.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Madison, County of Morris, State of New Jersey, hereby affirms approval for the "5K run" in Madison which was held on Thursday, May 10, 2007, as described herein, subject to any safety requirements imposed by the Madison Police Department.

R 106 - 2007

**RESOLUTION OF THE BOROUGH OF MADISON APPROVING RAFFLES
LICENSE APPLICATION SUBMITTED BY COVENANT HOUSE AUXILIARY
OF MORRIS COUNTY**

BE IT RESOLVED by the Council of the Borough of Madison, County of Morris, State of New Jersey, that the following application for Raffles License, to be held as listed below, be and the same is hereby approved:

COVENANT HOUSE AUXILIARY OF MORRIS COUNTY

I.D. No. 274-4-36780

R.A. No. 1050 – On Premises

September 29, 2007

BE IT FURTHER RESOLVED that a certified copy of this

Resolution be forwarded to the Legalized Games of Chance Control Commission.

R 107-2007

**RESOLUTION OF THE BOROUGH OF MADISON APPROVING 1ST ANNUAL
GIRLS RUN 5K TO BE HELD ON JUNE 9, 2007**

WHEREAS, Girls on the Run of NJ East has requested to hold a A5K run@ in Madison on Saturday, June 9, 2007; and

WHEREAS, the run will begin at 8:15 a.m., at the Madison Community Pool on the route approved by the Madison Borough Police Chief, said route being approximately 3.1 miles long; and

WHEREAS, Police Chief Chirico recommends approval of this request.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Madison, County of Morris, State of New Jersey, that the request of Girls on the Run of NJ East to hold a "5K run" in Madison on Saturday, June 9, 2007, as described herein is hereby approved, subject to any safety requirements

imposed by the Madison Police Department.

R 108-2007

RESOLUTION OF THE MADISON BOROUGH COUNCIL AUTHORIZING DEVELOPER'S AGREEMENT BETWEEN THE BOROUGH OF MADISON AND GIRALDA FARMS PHASE I SPE LLC SUCCESSOR TO RECKSON OPERATING PARTNERSHIP, L.P. FOR PREMISES AT LOT 1, BLOCK 3202

WHEREAS, Giralda Farms Phase I SPE LLC, successor to Reckson Operating Partnership, L.P. ("Reckson"), is the owner of certain property in the Borough of Madison designated as Lot 1, Block 3202 on the current Tax Map of the Borough; and

WHEREAS, Reckson has obtained from the Madison Planning Board preliminary and final site plan approval for construction of an office building by Resolution of the Madison Planning Board adopted July 28, 1998 which approval has been extended as provided by law with the most recent approval for extension granted by the Madison Planning Board on May 1, 2007; and

WHEREAS, Reckson and the Borough of Madison entered into a Developer's Agreement dated September 2, 1999; and

WHEREAS, the Madison Planning Board's recent approval required that an Amendment to the Developer's Agreement be entered into between Giralda Farms Phase I SPE LLC, successor to Reckson, and the Borough of Madison; and

WHEREAS, the Madison Borough Engineer has recommended that the attached Amendment to the Developer's Agreement be entered into.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Madison, in the County of Morris in the State of New Jersey as follows:

1. The Amendment to the Developer's Agreement between Giralda Farms Phase I SPE LLC and the Borough of Madison regarding the proposed development on Lot 1, Block 3202 is hereby approved.
2. The Mayor and Borough Clerk are hereby authorized and directed on behalf of the Borough to enter into such agreement on behalf of the Borough of Madison in a form acceptable to the Borough Attorney for recording in the Morris County's Clerk's Office after it is fully executed.

R 109-2007

RESOLUTION OF THE BOROUGH OF MADISON CONFIRMING SETTLEMENT AND AUTHORIZING PAYMENT OF \$23,600.00 FOR THE BOROUGH'S SHARE OF DEFENSE COSTS AND SETTLEMENT IN THE MATTER OF ROSEDALE MANOR v. BOROUGH OF MADISON

WHEREAS, the Borough of Madison and Stephen Jones as Construction Official were named as Defendants in the following lawsuits:

Rosedale Manor Associates, LLP v. Borough of Madison et al, Civil Action No. 04-0341 (JCL), pending in the United States District Court for the District of New Jersey;

Brown et al. v. Borough of Madison, et al Civil Action Nos. 04-4185 and 04-4144 (JCL), pending in the United States District Court for the District of New Jersey and consolidated with No.04-0341 (JCL);

Rosedale Manor Associates, LLP v. The Borough of Madison, et al, Docket number MRS-L-3485-04 filed in the Superior Court of New Jersey, Morris County (previously dismissed by the Court)

arising out of the Borough's use of its Kings Road property known as Block 2601 Lot 26 for a cell tower location; and

WHEREAS, all three matters was settled on behalf of the Borough by the Borough's insurance carrier for the total amount of \$40,000.00, to be paid by the insurance carrier to Plaintiff Rosedale Manor; and

WHEREAS, pursuant to the terms of the insurance contract, the Borough's deductible plus its share of the defense costs is \$23,600.00.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, as follows:

The Borough Council confirms acceptance of said settlement.

The Borough Council authorizes payment of the sum of \$23,600.00 as its deductible plus its share of the defense costs in this matter to the carrier.

R 110-2007

RESOLUTION OF THE BOROUGH OF MADISON APPOINTING JUANITA VAN RYZIN OF MADISON TO THE POSITION OF SCHOOL CROSSING GUARD

BE IT RESOLVED, by the Council of the Borough of Madison, County of Morris, State of New Jersey, that Juanita Van Ryzin of Madison is hereby appointed to the position of school crossing guard, effective immediately.

BE IT FURTHER RESOLVED, by the Council of the Borough of Madison, that she be compensated in accordance with the Borough Resolution establishing the salaries for part-time, school crossing guards.

R 111-2007

RESOLUTION OF THE BOROUGH OF MADISON AUTHORIZING RELEASE OF PERFORMANCE BOND AND GUARANTEE FOR THE LOCATION OF GIBBONS PLACE MINOR SUBDIVISION AT TAX MAP BLOCK 4305 LOTS 15, 15.01 & 17

WHEREAS, the Borough Engineer has recommended that the Performance Bond and Performance Guarantee of \$9,725.00 be released to Parisi Builders, Inc., in connection with site improvements located at Gibbons Place, Block 4305, Lots 15, 15.01 and 17; and

WHEREAS, the Borough Engineer advises that all site work has been completed.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, that the Performance Bond and Performance Guarantee described herein be released to Parisi Builders, Inc.

Unfinished Business - None

APPROVAL OF VOUCHERS

On motion by Mr. Elias, seconded by Mr. Bowen and carried, the following vouchers of the Borough of Madison were approved for payment, and the supporting documentation of said vouchers was made part of the Supplemental Minute Book.

Public Safety \$17,716.00

Health & Public Assistance 6,455.41

Public Works & Engineering 304,188.82

Community Affairs 24,091.49

Finance & Borough Clerk 9,331,586.10

Utilities 626,473.55

Total \$10,310,511.37

The following roll call vote was recorded approving the aforementioned vouchers:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen

Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

New Business - None

Adjournment

There being no further business to come before the Council, the meeting was adjourned at 11:30 p.m. by unanimous voice vote.

Respectfully submitted,

Marilyn Schaefer

Borough Clerk

Approved May 30, 2007