

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

November 23, 2009 - 7 p.m.

CALL TO ORDER

The Regular Meeting of the Mayor and Council of the Borough of Madison was held on the 23rd day of November 2009. Council President Jeannie Tsukamoto called the meeting to order at 7 p.m. in the Mayor's Office, Room #210 of Bayley-Ellard High School, 205 Madison Avenue, in the Borough of Madison.

STATEMENT IN COMPLIANCE WITH THE OPEN PUBLIC MEETINGS ACT

The Acting 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 transmitting a copy of the meeting notice to the Madison Eagle and Morris County Daily Record, posting a copy on the bulletin board at the main entrance of Bayley-Ellard High School, and filing a copy in the office of the Clerk, all on January 6, 2009. This Notice was made available to members of the general public."

ROLL CALL

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

Council Members:

Astri J. Baillie
John M. Elias
Robert H. Conley
Jeannie Tsukamoto
Vincent A. Esposito
Sebastian J. Cerciello

Absent: Mayor Mary-Anna Holden, excused

Also Present:

Raymond M. Codey, Borough Administrator
Elizabeth Osborne, Acting Borough Clerk
Joseph Mezzacca, Jr., Borough Attorney
Donald Links, Council Member-Elect

AGENDA REVIEW

One Contract Matter and two Litigation Matters were added to the Executive Agenda.

READING OF CLOSED SESSION RESOLUTION

Ms. Baillie moved:

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

MINUTES FOR APPROVAL (1)
Executive Session Minutes of November 9, 2009

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

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CONTRACT MATTERS (6)
ELECTRIC UTILITY MATERIALS
BAYLEY-ELLARD
UTILITY RATES
13 MADISON AVENUE, LLC
REMOVAL OF LEAVES BID
HDM

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

PERSONNEL MATTERS (1)
PERSONNEL MANUAL

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

LITIGATION MATTERS (3)
COUGAR FIELD
STOP & SHOP
QUALITY OF LIFE ORDINANCE

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

POTENTIAL LITIGATION MATTERS (1)
ZONING PROCEDURES

Seconded: Mr. Elias
Vote: Approved by voice vote

RECONVENE IN COUNCIL CHAMBER

Mrs. Tsukamoto reconvened the Regular Meeting at 8:10 p.m. in the 3rd Floor Meeting Room of Bayley-Ellard with all members present. The Pledge of Allegiance was recited by all.

APPROVAL OF MINUTES

Ms. Baillie moved approval of the **Executive Minutes of November 9, 2009**. Mr. Elias seconded the motion, which passed with the following roll call vote recorded:

Yeas: Ms. Baillie, Mr. Elias, Mr. Conley
Mrs. Tsukamoto, Dr. Esposito, Mr. Cerciello
Nays: None

Ms. Baillie moved approval of the **Regular Meeting Minutes of November 9, 2009**, with the following amendments:

p. 3 of 11 Add: **“Ms. Baillie thanked Mrs. Vitale for her many years of service to the Borough.”**

p. 4 of 11 Jim McMahon “noted that the issue of sidewalks was raised fifteen years ago and, at that time, **there was no support for a sidewalk along Woodland.**”

p. 4 of 11 Bonnie Layton “noted she attended the informational meeting for residents regarding construction on Woodland Road and **there was no mention made that a discussion of the Woodland Road project would take place at the Council Meeting. Mrs. Layton raised concern for the safety at the intersection of Noe Avenue and Woodland Road should a sidewalk be constructed and**

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opposed a concrete sidewalk for several reasons including the maintenance, the increased impervious coverage, and concrete is not as attractive as crushed stone.”

p. 4 of 11 Add: **Mr. Peter Lillard of Woodland Road voiced his opposition to sidewalks on Woodland.**

Mr. Elias seconded the motion, which passed with the following roll call vote recorded:

Yeas: Ms. Baillie, Mr. Elias, Mr. Conley
Mrs. Tsukamoto, Dr. Esposito, Mr. Cerciello
Nays: None

GREETINGS TO PUBLIC

Mrs. Tsukamoto made the following comments:

Mrs. Tsukamoto wished Mayor Holden a speedy recovery and wished the residents of Madison a Happy Thanksgiving. Mrs. Tsukamoto invited all residents to the annual parade and holiday events to be held on Friday, November 27, 2009.

REPORTS OF COMMITTEES

Public Safety

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

Ms. Baillie had no report for Public Safety, however she noted her attendance at several workshops at the New Jersey State League of Municipalities Convention in Atlantic City, NJ, including workshops on the subject of the new proposed tunnel and the effects on train station parking, downtown revitalization and participation in the Sustainable NJ program to attain grant funding.

Utilities

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

Mr. Elias announced that the Electric Department has set holiday wreaths and the annual tree in preparation for the festivities on Friday, November 27th. Also the Electric Department has installed a permanent steel cable for promotional banners across Main Street, and work has begun on the primary voltage feeder for improvements to the Hartley Dodge Memorial Building.

Public Works and Engineering

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

Mr. Conley reported that the South Street reconstruction project is well under way with paving completed. The Pomeroy Road reconstruction project bid specification should be complete, with this project slated to begin in March 2010. The school signal replacement program has been completed, and a pre-construction meeting for the Kings/Prospect signal replacement project took place with Kevco Electric, Inc., of Bloomfield, NJ. Mr. Conley noted that the Green Avenue sewer line replacement project has been completed. The renovation project at the Hartley Dodge Memorial Building is moving along nearing 35% completion. Mr. Conley reported that the Dodge Field improvements project, as well as the Madison Train Station landscape improvements project, is now complete. The Madison Recreation Center fencing has been ordered and should be ready in approximately six weeks. Leaf removal is on the agenda for discussion later this meeting.

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Finance and Borough Clerk

Mrs. Tsukamoto, Chair of the Committee, made the following comments:
Mrs. Tsukamoto noted her attendance at the New Jersey State League of Municipalities Convention that was both informative and educational, attending sessions on various issues including grants, improving technology and communications, ethics, going green, consolidation of services, and using the arts and history to grow the economy. Mrs. Tsukamoto noted that, along with Mr. Conley and Dr. Esposito, she attended a session on controlling liability claims and, therefore, the Borough will receive a \$750.00 credit on the municipal insurance premium. Mrs. Tsukamoto encouraged other Council Members to attend local liability claims sessions to receive additional insurance premium credit. Mrs. Tsukamoto asked everyone to remember those less fortunate by donating money or time at this time of year.

Community Affairs

Dr. Esposito, Chair of the Committee, made the following comments:
Dr. Esposito announced the Main Street Stimulus Program has begun with the whole town virtually on sale by purchasing Madison gift certificates to be used at all retail establishments in Madison. Buy your gift certificates at Cramer's Carpet One store or from any of the four elementary school Parent/Teacher Organizations. Dr. Esposito also announced that the annual Holiday Parade and Tree Lighting will be held on Friday, November 27th, with the parade kicking off at 5:30 p.m. MACA will hold their annual Holiday Music Festival as well on Friday in and around downtown throughout the evening. Dr. Esposito noted that the Chamber of Commerce will hold Holiday Shopping Days December 10th through the 12th with special sales.

Health & Public Assistance

Mr. Cerciello, Chair of the Committee, made the following comments:
Mr. Cerciello noted that the Madison Health Department has administered 3,000 H1N1 vaccines to date and that a clinic will be held at Madison High School on Saturday, November 28th.

COMMUNICATIONS AND PETITIONS - None

Mr. Cerciello asked for clarification of the procedure for addressing residents' correspondence. Mr. Mezzacca advised Mr. Cerciello to forward correspondence to the Borough Clerk, and any item he wishes to address should be placed on an agenda recommendation for discussion by the Mayor and Council at the next Council Meeting.

INVITATION FOR DISCUSSION (1 of 2)

Mrs. Tsukamoto opened the meeting to the public for their opportunity to ask questions and make comments on those items listed on the Agenda only. Mrs. Tsukamoto 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.

Since no member of the public wished to be heard, the invitation for discussion was closed.

AGENDA DISCUSSIONS

11/23/2009-1 MORRIS COUNTY OPEN SPACE TRUST FUND GRANT FOR BAYLEY-ELLARD FIELDS

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Council was in agreement to authorize acceptance of the Morris County Open Space Trust Fund Grant for the purchase of the Bayley-Ellard Fields in the amount of \$1,750,000.00. Resolution R 279-2009 is listed on the Consent Agenda.

11/23/2009-2 Discussion removed, the # retired

11/23/2009-3 LEAF REMOVAL

Mr. Conley raised concern regarding the leaf removal process in the Borough of Madison, noting that the award of bid for the collection of leaves in the amount of \$88,750.00 is on the Consent Agenda later in this meeting. New challenges this year include leaves falling all at one time and various residents changing their routines, causing a larger burden on the leaf removal process. Mr. Conley proposed new ideas for leaf collection, including starting bag collection earlier, perhaps in September, restricting curbside collection until the last weekend in October, and prioritizing the collection routes. Mr. Conley suggested perhaps use of bags by residents collected for free and a \$50.00 charge for raking to the curb collection. A meeting will be scheduled with Public Works to continue discussion, and Mr. Conley will return with additional proposals.

11/23/2009-4 AUTHORIZING MADISON POLICE DEPARTMENT TO PERMIT PARKING FOR MERCHANTS AND MERCHANT EMPLOYEES TO PARK IN KINGS ROAD LOT 3 FOR THE HOLIDAY SEASON

Following discussion, there was consensus to list on the Consent Agenda a resolution authorizing the Police Department to permit additional parking for merchants and their employees behind the Public Safety Building for the holiday season and to increasing one-hour parking to two hours, as recommended by Main Street Executive Director Jim Burnet and Police Chief John Trevena. Resolution R 284-2009 is listed on Consent Agenda.

11/23/2009-5(1)&(2)&(3) UTILITY RATE INCREASES

Mr. Codey explained that two ordinances will be moved later this evening regarding water and sewer utility rate increases. The water utility rate increase is only the third in the past 20 years, and Madison residents still pay 77% less than what surrounding communities are charged for their water. Ordinance 59-2009 is an annual adjustment for tax-exempt properties in the Borough of Madison that use the sewer system. Ms. Baillie stated she believes that the discussion of electric utility rate increases should be tied to the budget process and that the Council should look to cut expenses first and that the Council should look to cut expenses. Mr. Cerciello asked Mr. Codey to explain the impact on the budget by not introducing the electric utility ordinance this evening, to which Mr. Codey explained that there would be a deficit in surplus revenues of approximately \$250,000.00. Mr. Conley stated he believes in an annual increase in utility rates. Ordinance 57-2009 has been withdrawn, and the # retired. Ordinance 58-2009 revising water rates and service fees, and Ordinance 59-2009 increasing the sewer use charge for tax-exempt properties are listed for introduction.

ADVERTISED HEARINGS

The Acting Clerk made the following statement:

Ordinance 55-2009 scheduled for hearing tonight was submitted in writing at a Regular Meeting of the Mayor and Council held on November 9, 2009, was introduced by title and passed on first reading, was published in the Madison Eagle and made available to members of the general public requesting same.

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Ordinance 53-2009 is scheduled for re-introduction with changes later in this meeting.

Ordinance 54-2009 was adopted and approved at the Borough of Madison Public Council Meeting of November 9, 2009.

ORDINANCE 55-2009

ORDINANCE OF THE BOROUGH OF MADISON AMENDING ORDINANCE 39-2009 OF THE BOROUGH OF MADISON APPROPRIATING FUNDS FROM THE ELECTRIC CAPITAL IMPROVEMENT FUND FOR PURCHASE OF A NEW REPLACEMENT SINGLE BUCKET TRUCK FROM \$130,000.00 TO \$137,000.00

WHEREAS, Ordinance 39-2009 of the Borough of Madison appropriated \$130,000.00 from the Electric Capital Improvement Fund to purchase a new replacement single bucket truck and a two year warranty and related equipment; and

WHEREAS, the Electric Utility Superintendent has recommended that the Borough amend Ordinance 39-2009 to appropriate an additional \$7,000.00 from the Electric Capital Improvement Fund thereby increasing Ordinance 39-2009 to \$137,000.00 to purchase a new replacement single bucket truck and a two year warranty and related equipment; and

WHEREAS, the Director of Finance has attested to the availability of the funds in the Electric Capital Improvement Fund in an amount not to exceed \$7,000.00 for this purpose; and

WHEREAS, the Borough Council has determined that the Borough should amend Ordinance 39-2009 to appropriate an additional \$7,000.00 from the Electric Capital Improvement Fund thereby increasing Ordinance 39-2009 to \$137,000.00 to purchase a new replacement single bucket truck and a two year warranty and related equipment.

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: Ordinance 39-2009 is amended to appropriate an additional \$7,000.00 from the Electric Capital Improvement Fund thereby increasing Ordinance 39-2009 to \$137,000.00 to purchase a new replacement single bucket truck and a two year warranty and related equipment.

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.

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Mrs. Tsukamoto opened up the public hearing on Ordinance 55-2009. Since no member of the public wished to be heard, the public hearing was closed.

Mr. Elias moved that Ordinance 55-2009, which was read by title, be finally adopted. Mr. Conley seconded the motion. There was no further Council discussion, and the motion passed with the following roll call vote recorded:

Yeas: Ms. Baillie, Mr. Elias, Mr. Conley
Mrs. Tsukamoto, Dr. Esposito, Mr. Cerciello
Nays: None

Mrs. Tsukamoto declared Ordinance 55-2009 adopted and finally passed and ordered the Clerk to publish the notice thereof in the newspaper and to record the ordinance as required by law.

INTRODUCTION OF ORDINANCES

The Acting Clerk made the following statement:

Ordinances scheduled for introduction and first reading tonight will have a hearing during the meeting of December 14, 2009, in the 3rd Floor Meeting Room of Bayley-Ellard High School, 205 Madison Avenue off Danforth Road in the Borough of Madison at 8 p.m., or as soon thereafter as practical, for further consideration and final adoption. Said ordinances will be published in the Madison Eagle, be posted at the main entrance to Bayley-Ellard High School and be made available to members of the public requesting same, as required by law.

Mrs. Tsukamoto called up ordinances for first reading and asked the Acting Clerk to read said ordinance by title:

ORDINANCE 53-2009

ORDINANCE OF THE BOROUGH OF MADISON AMENDING CHAPTER 195-37 OF THE BOROUGH CODE ESTABLISHING AND REGULATING PROPERTIES IN THE RIPARIAN BUFFER ZONE

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: Chapter 195, Article VI of the Borough Code of the Borough of Madison shall be amended to be entitled “Stormwater, Wetland Protection, Steep Slopes, Flood Control and Riparian Buffer Zone”.

SECTION 2: Section 195-37 of the Borough Code of the Borough of Madison shall be amended to include a new section 195-37.10 to be entitled “Riparian Buffer Zone” and which shall read in its entirety as follows:

§195-37.10 Riparian Buffer Zone

A. INTENT AND PURPOSE

The governing body of the Borough of Madison finds that riparian lands adjacent to streams, lakes, or other surface water bodies that are adequately vegetated provide

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an important environmental protection and water resource management benefit. It is necessary to protect and maintain the beneficial character of riparian areas by implementing specifications for the establishment, protection, and maintenance of vegetation along the surface water bodies within the jurisdiction of the Borough, consistent with the interest of landowners in making reasonable economic use of parcels of land that include such designated areas. The purpose of this Ordinance is to designate riparian zones, and to provide for land use regulation therein in order to protect the streams, lakes, and other surface water bodies of the Borough of Madison; to protect the water quality of watercourses, reservoirs, lakes, and other significant water resources within the Borough of Madison; to protect the riparian and aquatic ecosystems of Madison; to provide for the environmentally sound use of the land resources of the Borough, and to complement existing state, regional, county, and municipal stream corridor protection and management regulations and initiatives. The specific purposes and intent of this Ordinance are to:

1. Restore and maintain the chemical, physical, and biological integrity of the water resources of the Borough of Madison;
2. Prevent excessive nutrients, sediment, and organic matter, as well as biocides and other pollutants, from reaching surface waters by optimizing opportunities for filtration, deposition, absorption, adsorption, plant uptake, biodegradation, and denitrification, which occur when stormwater runoff is conveyed through vegetated buffers as stable, distributed sheet flow prior to reaching receiving waters;
3. Provide for shading of the aquatic environment so as to moderate temperatures, retain more dissolved oxygen, and support a healthy assemblage of aquatic flora and fauna.
4. Provide for the availability of natural organic matter (fallen leaves and twigs) and large woody debris (fallen trees and limbs) that provide food and habitat for small bottom dwelling organisms (insects, amphibians, crustaceans, and small fish), which are essential to maintain the food chain;
5. Increase stream bank stability and maintain natural fluvial geomorphology of the stream system, thereby reducing stream bank erosion and sedimentation and protecting habitat for aquatic organisms;
6. Maintain base flows in streams and moisture in wetlands;
7. Control downstream flooding; and
8. Conserve the natural features important to land and water resources, e.g., headwater areas, groundwater recharge zones, floodways, floodplains, springs, streams, wetlands, woodlands, and prime wildlife habitats.

B. STATUTORY AUTHORITY

The municipality of the Borough of Madison is empowered to regulate land uses under the provisions of the New Jersey Municipal Land Use Law, N.J.S.A 40:55D-1 et seq., which authorizes each municipality to plan and regulate land use in order to protect public health, safety and welfare by protecting and maintaining native

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vegetation in riparian areas. The Borough of Madison is also empowered to adopt and implement this Ordinance under provisions provided by the following legislative authorities of the State of New Jersey:

1. Water Pollution Control Act, N.J.S.A. 58:10A et seq.
2. Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.
3. Spill Compensation and Control Act, N.J.S.A. 58:10-23 et seq.
4. Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq.
5. Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.

C. DEFINITIONS

Acid Producing Soils means soils that contain geologic deposits of iron sulfide minerals (pyrite and marcasite) which, when exposed to oxygen from the air or from surface waters, oxidize to produce sulfuric acid. Acid producing soils, upon excavation, generally have a pH of 4.0 or lower. After exposure to oxygen, these soils generally have a pH of 3.0 or lower. Information regarding the location of acid producing soils in New Jersey can be obtained from local Soil Conservation District offices.

Administrative Authority means the Planning Board or Board of Adjustment or Construction Office for the Borough with all of the powers delegated, assigned, or assumed by them according to statute or ordinance.

Applicant means a person, corporation, government body or other legal entity applying to the Planning Board, Board of Adjustment or the Construction Office proposing to engage in an activity that is regulated by the provisions of this section, and that would be located in whole or in part within a regulated Riparian Zone.

Floodway shall have the meaning ascribed to this term by the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.) and regulations promulgated there under published at N.J.A.C. 7.13 et seq., and any supplementary or successor legislation and regulations from time to time enacted or promulgated.

Intermittent Stream means surface water drainage channels with definite bed and banks in which there is not a permanent flow of water. Streams shown as a dashed line on either the USGS topographic quadrangle maps or the USDA County Soil Survey Maps of the most recent edition that includes hydrography are included as intermittent streams.

Lake, pond, or reservoir means any impoundment, whether naturally occurring or created in whole or in part by the building of structures for the retention of surface water, excluding sedimentation control and stormwater retention/detention basins and ponds designed for treatment of wastewater.

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Perennial Stream means a stream that flows continuously throughout the year in most years. These streams usually appear as a blue line on USGS topographic quadrangle maps or on USDA County Soil Survey Maps.

Riparian Zone means the land and vegetation within and directly adjacent to all surface waters including, but not limited to lakes, ponds, perennial and intermittent streams, up to and including their point of origin.

Riparian Zone Management Plan means a plan approved by the Engineer of the Borough of Madison. The plan shall be prepared by a landscape architect, professional engineer or other qualified professional, and shall evaluate the effects of any proposed activity/uses on any riparian zone. The plan shall identify existing conditions, all proposed activities, and all proposed management techniques, including any measures necessary to offset disturbances to any affected riparian zone.

Riparian Zone Waters are such which have been identified for protection from degradation in water quality characteristics because of their clarity, color, scenic setting, and other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources. Such waters shall also be such as may be defined by statute or administrative regulation.

Surface Water Body means any perennial stream, intermittent stream, lake, pond, or reservoir, as defined herein. In addition, any state open waters identified in a letter of interpretation issued by the New Jersey Department of Environmental Protection Land Use Regulation Program shall also be considered surface water bodies.

D. ESTABLISHMENT OF RIPARIAN ZONES

1. Riparian Zones adjacent to all waters shall be protected from avoidable disturbance and shall be delineated as follows:
 - a. The riparian zone shall be 300 feet wide along both sides of any Category One water, and all upstream tributaries situated within the same HUC 14 watershed. The riparian zone shall equal the Special Water Resource Protection Area, and shall be measured as defined at N.J.A.C. 7:8-5.5(h).
 - b. The riparian zone shall be 150 feet wide along both sides of the following waters:
 - 1) Any trout production water and all upstream waters (including tributaries);
 - 2) Any trout maintenance water and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water;
 - 3) Any segment of a water flowing through an area that contains documented habitat for a threatened or endangered species of

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plant or animal, which is critically dependent on the regulated water for survival, and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water; and

- 4) Any segment of a water flowing through an area that contains acid producing soils.
- c. For all other waters, a riparian zone of 50 feet wide shall be maintained along both sides of the water.
2. The portion of the riparian zone that lies outside of a surface water is measured landward from the top of bank.
3. The riparian zones of the entire municipality of the Borough of Madison, including all land and water areas within its boundaries, which designates Surface Water Bodies, is based upon the most recent versions of:
 - a. Borough of Madison Municipal Stormwater Management Plan based upon the maps of lakes, ponds, perennial or intermittent streams, subwatersheds, waterways and classifications, and hydraulic unit code contained within it.
 - b. Borough of Madison Flood Insurance Study and Flood Insurance Rate Map as produced by the Federal Emergency Management Agency.
 - c. Borough of Madison Official Tax Map.

Maps of the municipality on which these designations have been overlain shall be on file and maintained by the offices of the Clerk of the Borough of Madison. This map conforms to all applicable laws, rules and regulations applicable to the creation, modification and promulgation of zoning maps.

4. It shall be the duty of the Municipal Engineer at such times as may be required by law, to propose modifications to the maps required by any naturally occurring or permitted change in the location of a defining feature of a surface water body and to maintain files of decisions or appeals, and by changes made by the New Jersey Department of Environmental Protection in surface water classifications or Floodway delineations. Floodway delineations shall be based upon the State's adopted floodway delineations. However requests for alterations to the adopted delineations can be provided to the Department for consideration if site-specific information is available.
5. The applicant or designated representative shall be responsible for the initial determination of the presence of a riparian zone on a site, and for identifying the area on any plan submitted to the Borough of Madison in conjunction with an application for a construction permit, subdivision, land development, or other improvement that requires plan submissions or permits. This initial determination shall be subject to review and approval by the municipal engineer, designee or, where required, by the New Jersey Department of Environmental Protection.

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6. **EXEMPTIONS.** Instead of the riparian zone protection requirements above, the applicant must demonstrate compliance with one of the following:
- a. The proposed project or activity is not in the riparian zone established;
 - b. The proposed disturbance in a riparian zone is for a linear development with no feasible alternative route;
 - c. The proposed disturbance in a riparian zone is in accordance with a stream corridor restoration or stream bank stabilization plan or project approved by the Department of Environmental Protection;
 - d. The proposed disturbance of a riparian zone is necessary to provide for public pedestrian access or water dependent recreation that meets the requirements of the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, the Flood Hazard Area Control rules, N.J.A.C. 7:13, or the Coastal Zone Management rules, N.J.A.C. 7:7E;
 - e. The proposed disturbance of a riparian zone is required for the remediation of hazardous substances performed with New Jersey DEP or Federal EPA oversight pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq. or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.;
 - f. The proposed disturbance is for redevelopment that does not exceed the limits of existing impervious surfaces; or
 - g. The proposed disturbance would prevent extraordinary hardship on the property owner peculiar to the property; or prevent extraordinary hardship, provided the hardship was not created by the property owner, that would not permit a minimum economically viable use of the property based upon reasonable investment.

E. USES PERMITTED IN RIPARIAN ZONES

Any other riparian zone area shall remain in a natural condition or, if in a disturbed condition, including agricultural activities, at the time of adoption of this ordinance may be restored to a natural condition. There shall be no clearing or cutting of trees and brush, except for removal of dead vegetation and pruning for reasons of public safety or for the replacement of invasive species with indigenous species. There shall be no altering of watercourses, dumping of trash, soil, dirt, fill, vegetative or other debris, re-grading or construction. The following uses are permitted either by right or after review and approval by the municipality in riparian zones. No new construction, development, use, activity, encroachment, or structure shall take place in a riparian zone, except as specifically authorized in this Section. The following uses shall be permitted within a riparian zone:

1. Open space uses that are primarily passive in character shall be permitted by right to extend into a riparian zone, provided near stream vegetation is preserved. Such uses include wildlife sanctuaries, nature preserves, forest preserves, fishing areas, game farms, fish hatcheries and fishing reserves, operated for the protection and propagation of wildlife, but excluding structures. Such uses also include passive recreation areas of

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public and private parklands, including unpaved hiking, bicycle and bridle trails, provided that said trail have been stabilized with pervious materials.

2. Fences, for which a permit has been issued by the Construction Code Office, to the extent required by applicable law, rule or regulation.
3. Crossings by farm vehicles and livestock, recreational trails, roads, railroads, storm water lines, sanitary sewer lines, water lines and public utility transmission lines, provided that the land disturbance is the minimum required to accomplish the permitted use, subject to any applicable State permits are acquired, and provided that any disturbance is offset by buffer improvements and that the area of the crossing is stabilized against significant erosion due to its use as a crossing.
4. Stream bank stabilization or riparian reforestation, which conform to the guidelines of an approved Riparian Zone Management Plan, or wetlands mitigation projects that have been approved by the Department of Environmental Protection.

F. PERFORMANCE STANDARDS FOR RIPARIAN ZONES

For all riparian zones, the following conditions shall apply:

1. All new major and minor subdivisions and site plans shall be designed to provide sufficient areas outside of the riparian zone to accommodate primary structures, any normal accessory uses appurtenant thereto, as well as all planned lawn areas.
2. Portions of lots within the riparian zone must be permanently restricted by deed or conservation easement held by the Borough of Madison, its agent, or another public or private land conservation organization which has the ability to provide adequate protection to prevent adverse impacts within the riparian zone. A complete copy of the recorded conservation restriction that clearly identifies the deed book and pages where it has been recorded in the office of the Morris County Clerk must be submitted to the municipality.
3. Any lands proposed for development which include all or a portion of a riparian zone shall as a condition of any major subdivision or major site plan approval, provide for the vegetation or revegetation of any portions of the riparian zone which are not vegetated at the time of the application or which were disturbed by prior land uses, including for agricultural use.
4. For building lots which exist as of the date of adoption of this ordinance, but for which a building permit or a preliminary site plan approval has not been obtained or is no longer valid, the required minimum front, side, and rear setbacks may extend into the riparian zone, provided that a deed restriction and/or conservation easement is applied which prohibits clearing or construction in the riparian zone.
5. All stormwater shall be discharged outside of but may flow through a riparian zone and shall comply with the Standard For Off-Site Stability in

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the “Standards for Soil Erosion and Sediment Control in New Jersey”, established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. (See N.J.A.C. 2:90-1.3.)

6. If stormwater discharged outside of and flowing through a riparian zone cannot comply with the Standard For Off-Site Stability, then the proposed stabilization measures must meet the requirements of the Flood Hazard Area Control Act Rule at N.J.A.C. 7:13-10.2 et. seq., and have an approved Flood Hazard permit.

G. NONCONFORMING STRUCTURES AND USES IN RIPARIAN ZONES

Nonconforming structures and uses of land within the riparian zone are subject to the following requirements:

1. Legally existing but nonconforming structures or uses may be continued.
2. For all other riparian zones:
 - a. Encroachment within the riparian zone shall only be allowed where previous development or disturbance has occurred.
 - b. Existing impervious cover shall not be increased within the riparian zone as a result of encroachments where previous development or disturbances have occurred.
 - c. Discontinued nonconforming uses may be resumed any time within one year from such discontinuance but not thereafter when showing clear indications of abandonment.

H. USES PROHIBITED IN RIPARIAN ZONES

For all riparian zones, any use or activity not specifically authorized elsewhere in this chapter shall be prohibited. By way of example, the following activities and facilities are prohibited, except where authorized or excepted elsewhere in this chapter:

1. Removal or clear-cutting of trees and other vegetation or soil disturbance such as grading, except for selective vegetation removal for the purpose of stream or riparian area stabilization or restoration projects that require vegetation removal or grading prior to implementation.
2. Storage of any hazardous or noxious materials.
3. Use of fertilizers, pesticides, herbicides, and/or other chemicals in excess of prescribed industry standards or the recommendations of the Soil Conservation District.
4. Roads or driveways, except where permitted.
5. Motor or wheeled vehicle traffic in any area.
6. Parking lots.

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7. Any type of permanent structure.
8. New subsurface sewage disposal areas.
9. Residential grounds or lawns.

I. ACTIVITIES PERMITTED IN RIPARIAN ZONES IN THE CASE OF NO REASONABLE OR PRUDENT ALTERNATIVE OR EXTREME HARDSHIP

1. For all riparian zones, hardship variances may be granted in cases of a preexisting lot (existing at the time of adoption of this ordinance) when there is insufficient room outside the riparian zone for uses permitted by the underlying zoning and there is no other reasonable or prudent alternative to placement in the riparian zone, including obtaining variances from setback or other requirements that would allow conformance with the riparian zone requirements, and provided that demonstrations are made including but not limited to:
 - a. The existence of an extreme economic hardship, which:
 - 1) Do not apply to or affect other property in the immediate vicinity;
 - 2) Relate to or arise out of the characteristics of the subject property because of the particular physical surroundings, shape or topographical conditions.
 - 3) Demonstrate that there is no adjacent land that is reasonably available or could be obtained, utilized, expanded or managed in order to fulfill the basic purposes.
 - b. An applicant shall be deemed to have established compelling public need if the applicant demonstrates, based on specific facts that one of the following applies:
 - 1) The proposed project will serve an essential public health or safety need;
 - 2) The proposed use is required to serve an existing public health or safety need; or
 - 3) There is no alternative available to meet the established public health or safety need.
 - c. A variance can only be granted if it is shown that the activity is in conformance with all applicable local, state, and federal regulations, and that the exception granted is the minimum relief necessary to relieve the hardship.
2. If the above demonstrations are made, then the encroachment of impervious surfaces (structures or pavement) otherwise permitted by the underlying zoning is permitted to the extent of 750 square feet total. Said encroachment is not permitted closer than 100 feet from the top of the bank at bank-full flow or level of Category Two Waters for Trout Production (FW2-TP), or closer than 50 feet from the top of the bank at bank-full flow or level of other surface water bodies.

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3. If such an exception is granted, the applicant shall rehabilitate an environmentally degraded riparian zone area within or adjacent to the same site, and at least equivalent in size to the riparian zone reduction permitted, or, if not possible, rehabilitate or expand a riparian zone area at least equivalent in size within a nearby site and, if available, within the same watershed. Rehabilitation shall include reforestation, stream bank stabilization and removal of debris, in accordance with a Riparian Zone Management Plan, as described. The Borough may require financial contribution be made to an Open Space or Municipal Stormwater Management Plan mitigation plan fund in exchange for this requirement.

J. RIPARIAN ZONE MANAGEMENT PLAN

1. Within any riparian zone, no construction, development, use, activity, or encroachment shall be permitted unless the effects of such development are accompanied by preparation, approval, and implementation of a Riparian Zone Management Plan.
2. The landowner, applicant, or developer shall submit to [municipal contact], or its appointed representative, a Riparian Zone Management Plan prepared by an environmental professional, professional engineer or other qualified professional which fully evaluates the effects of any proposed uses on the riparian zone. The Riparian Zone Management Plan shall identify the existing conditions including:
 - a. Existing vegetation;
 - b. Field delineated surface water bodies;
 - c. Field delineated wetlands;
 - d. The 100-year floodplain;
 - e. Flood Hazard Areas, including Floodway and Flood Fringe areas, as delineated by the New Jersey Department of Environmental Protection;
 - f. Soil classifications as found on Soil Surveys;
 - g. Existing subdrainage areas of site with HUC-14 (Hydrologic Unit Code) designations;
 - h. Slopes in each subdrainage area segmented into sections of slopes less than or equal to fifteen (15) percent; above fifteen percent but less than twenty (20) percent; and greater than twenty (20) percent.

The proposed plan shall describe all proposed uses/activities, and fully evaluate the effects of all proposed uses/activities in a riparian zone, and all proposed management techniques, including proposed vegetation and any other measures necessary to offset disturbances to the riparian zone. A discussion of activities proposed as well as management techniques proposed to offset disturbances and/or enhance the site to improve the riparian zone's ability to function effectively as a riparian zone shall also be included with the Riparian Zone Management Plan submittal to the Borough of Madison.

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3. The Plan shall be reviewed and must be approved by the Engineer of the Borough of Madison, in consultation with the Environmental Commission, as part of the subdivision and land development process.
4. The Riparian Zone Management Plan must include management provisions in narrative and/or graphic form specifying:
 - a. The manner in which the area within the riparian zone will be owned and by whom it will be managed and maintained.
 - b. The conservation and/or land management techniques and practices that will be used to conserve and protect the riparian zone, as applicable.
 - c. The professional and personnel resources that are expected to be necessary, in order to maintain and manage the riparian zone.
 - d. A revegetation plan, if applicable, that includes: three (3) layers of vegetation, including herbaceous plants that serve as ground cover, understory shrubs, and trees that when fully mature, will form an overhead canopy. Vegetation selected must be native, non-invasive species, and consistent with the soil, slope and moisture conditions of the site. The Engineer of the Borough of Madison may require species suitability to be verified by qualified experts from the Soil Conservation District, Natural Resources Conservation Service, New Jersey Department of Environmental Protection, US Fish and Wildlife Service and/or State or Federal forest agencies.
5. A Riparian Zone Management Plan is not required where the riparian zone is not being disturbed and conservation easements/deed restrictions are applied to ensure there will be no future clearing or disturbance of the riparian zone.
6. Performance of the Riparian Zone Management Plan shall be guaranteed for a minimum of two years, by a surety, such as a bond, cash or letter of credit, which shall be provided to the Borough of Madison prior to the Borough issuing any permits or approving any uses relating to the applicable use or activity.

K. BOUNDARY INTERPRETATION, APPEALS PROCEDURES, INSPECTIONS, CONFLICTS, SEVERABILITY

1. When a landowner or applicant disputes the boundaries of a riparian zone, or the defined bank-full flow or level, the landowner or applicant shall submit evidence to the Borough Engineer that describes the riparian zone, presents the landowner or applicant's proposed riparian zone delineation, and presents all justification for the proposed boundary change. For Category One (C1) riparian zones, the landowner or applicant must first obtain approval from the New Jersey Department of Environmental Protection. A decision from the Department must be included with the evidence submitted for municipal review.

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2. Inspections:

- a. Lands within or adjacent to an identified riparian zone shall be inspected by the Borough Engineer when:
 - 1) A subdivision or land development plan is submitted;
 - 2) A building permit is requested;
 - 3) A change or resumption of a nonconforming use is proposed;
 - 4) A discontinued nonconforming use is resumed more than a year later.
- b. The riparian zone may also be inspected periodically by representatives from the Borough of Madison if excessive or potentially problematic erosion is present, other problems are discovered, or at any time when the presence of an unauthorized activity or structure is brought to the attention of municipal officials or when the downstream surface waters are indicating reduction in quality.

Inspections will be conducted on an as-needed basis, should the Borough feel that a problem exists. All inspections will be undertaken be in accordance with local, state and federal requirements for property owner notification and permission.

3. Conflicts: All other ordinances, parts of ordinances, or other local requirements that are inconsistent or in conflict with this ordinance are hereby superseded to the extent of any inconsistency or conflict, and the provisions of this ordinance apply.

4. Severability:

- a. Interpretation: This Ordinance shall be so construed as not to conflict with any provision of New Jersey or Federal law.
- b. Notwithstanding that any provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, all remaining provisions of the Ordinance shall continue to be of full force and effect.
- c. The provisions of this Ordinance shall be cumulative with, and not in substitution for, all other applicable zoning, planning and land use regulations.

L. ENFORCEMENT

A prompt investigation shall be made by the appropriate personnel of the Borough of Madison, of any person or entity believed to be in violation hereof. If, upon inspection, a condition which is in violation of this Ordinance is discovered, a civil action in the Special Part of the Superior Court, or in the Superior Court, if the primary relief sought is injunctive or if penalties may exceed the jurisdictional limit of the Special Civil Part, by the filing and serving of appropriate process. Nothing in this Ordinance shall be construed to preclude the right of the Borough of Madison,

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pursuant to N.J.S.A 26:3A2-25, to initiate legal proceedings hereunder in Municipal Court. The violation of any section or subsection of this Ordinance shall constitute a separate and distinct offense independent of the violation of any other section or subsection, or of any order issued pursuant to this Ordinance. Each day a violation continues shall be considered a separate offense.

M. PENALTIES

Any person(s) found to be in violation of the provisions of this ordinance shall be subject to a fine not to exceed \$500 per violation, with each day or documented act or occurrence to be considered a separate violation.

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

Ms. Baillie moved that Ordinance 53-2009, which the Acting Borough 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: Ms. Baillie, Mr. Elias, Mr. Conley
Mrs. Tsukamoto, Dr. Esposito, Mr. Cerciello
Nays: None

ORDINANCE 56-2009

ORDINANCE OF THE BOROUGH OF MADISON APPROPRIATING \$2,710,000.00 FOR THE PURCHASE OF PROPERTY LOCATED AT 205 MADISON AVENUE, BEING A PORTION OF LOT 1, BLOCK 201 FROM THE DIOCESE OF PATERSON AND AUTHORIZE PURCHASE OF SAID PROPERTY FOR THE PURCHASE PRICE OF \$2,750,000.00

WHEREAS, the Borough Council has determined that it is in the best interest of the Borough to purchase ten acres of property located at 205 Madison Avenue, in the Borough of Madison, and known and designated as a portion of Lot 1 in Block 201 on the current tax map of the Borough (to be known as Lot 1.02 in Block 201); and

WHEREAS, the Borough Council authorized entry into a contract to purchase said property for \$2,750,000.00 by Resolution 130-2009; and

WHEREAS, the Contract for Purchase was entered into and a deposit of \$50,000.00 was made to the Seller which was appropriated and authorized by Ordinance 20-2009 of the Borough of Madison; and

WHEREAS, the Borough Council has determined that the Borough should appropriate \$2,710,000.00 from the Madison Open Space and Recreation Trust

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Fund and the Morris County Open Space Preservation Fund for the balance of the purchase price and closing costs of the land described herein; and

WHEREAS, the Director of Finance has attested to the availability of funds from a grant received from the Morris County Open Space Preservation Fund in an amount not to exceed \$1,750,000.00 for this purpose; and

WHEREAS, the Director of Finance has attested to the availability of funds in the Madison Open Space and Recreation Trust Fund in an amount not to exceed \$960,000.00 for this purpose.

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 of Madison is authorized to purchase the property described herein for the purchase price of \$2,750,000.00 pursuant to the terms of the contract previously entered into.

SECTION 2: The amount of \$2,710,000.00 is hereby appropriated from the Madison Open Space and Recreation Trust Fund and the Morris County Open Space Preservation Fund for the purchase of property located at 205 Madison Avenue, in the Borough of Madison, and known and designated as a portion of Lot 1 in Block 201 on the current tax map of the Borough (to be known as Lot 1.02 in Block 201).

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

Ms. Baillie moved that Ordinance 56-2009, which the Acting Borough 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: Ms. Baillie, Mr. Elias, Mr. Conley
Mrs. Tsukamoto, Dr. Esposito, Mr. Cerciello

Nays: None

ORDINANCE 57-2009

**ORDINANCE OF THE BOROUGH OF MADISON AMENDING CHAPTER 94
APPENDIX "A" SCHEDULE OF RATES FOR ELECTRIC UTILITY**

**ORDINANCE OF THE BOROUGH OF MADISON AMENDING CHAPTER 94
APPENDIX "A" SCHEDULE OF RATES FOR ELECTRIC UTILITY**

WHEREAS, the Chief Financial Officer of the Borough of Madison has recommended that the electric utility rates be increased due to increased costs; and

WHEREAS, the Borough Chief Financial Officer has recommended that Appendix A to Chapter 94 of the Borough Code, entitled "Borough of Madison

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Schedule of Rates for Electric Utility December 1993" be amended to reflect the following new rates:

Type	Customer Charge	Demand Charge	Energy Charge
Residential Service	\$4.48		0 to 600 kWh \$0.1778 601 kWh or higher \$0.1879
General Service (non demand)	\$4.58		\$0.1927 per kWh
General Service (demand)	\$8.99	\$10.391 per kW	\$0.1345 per kWh
Mid Level General Service – Demand	\$26.92	\$12.272 per kW	\$0.1084 per kWh
Large General Service – Demand	\$26.92	\$11.765 per kW	\$0.1041 per kWh
Outdoor Area Light Service		\$10.67 per 3,650 lumen mercury vapor lamp \$16.26 per 7,000 lumen mercury vapor lamp \$0.783 for each span of wire \$3.528 for each transformer \$1.020 for each pole	
Off-Peak Water-Heating Service	\$1.57		\$0.1025 per kWh

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Rider			
Standby Facilities Service Rider			\$1.178 per kWh

WHEREAS, the Borough Council, after due consideration has determined to proceed with said recommendation.

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: Appendix A to Chapter 94 of the Borough Code, entitled "Borough of Madison Schedule of Rates for Electric Utility December 1993" is hereby amended to revise the electric utility rates and classifications as set forth herein.

SECTION 3: All other rates and terms remain the same, except those changed herein.

SECTION 4: This Ordinance shall take effect on January 1, 2010.

Ms. Baillie moved that Ordinance 57-2009, which the Acting Borough Clerk read by title, be withdrawn. Mr. Elias seconded the motion, and the motion to withdraw Ordinance 57-2009 passed with the following roll call vote recorded:

Yeas: Ms. Baillie, Mr. Elias, Mr. Conley
Mrs. Tsukamoto, Dr. Esposito
Nays: Mr. Cerciello

ORDINANCE 58-2009

ORDINANCE OF THE BOROUGH OF MADISON AMENDING CHAPTER 190 OF THE MADISON BOROUGH CODE ENTITLED "WATER" TO AUTHORIZE THE REVISION OF THE BOROUGH OF MADISON'S WATER RATES AND SERVICE FEES

ORDINANCE OF THE BOROUGH OF MADISON AMENDING CHAPTER 190 OF THE MADISON BOROUGH CODE ENTITLED "WATER" TO AUTHORIZE THE REVISION OF THE BOROUGH OF MADISON'S WATER RATES AND SERVICE FEES

WHEREAS, the Chief Financial Officer of the Borough of Madison has recommended that the water utility rates be increased due to increased costs primarily for significant water main replacements and also to be more comparable with other water utility companies; and

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WHEREAS, the Chief Financial Officer has recommended that Section 190-32 A of the Borough Code regarding Water Rates for Metered Service be amended to read as follows:

- 190-32 A. (1) All water furnished in any quarter annual period shall be priced at the following rates:

<u>Rates per 100 Cubic Feet</u>	
0 to 1,000	\$2.52
1,001 to 3,000	\$2.66
3,001 and higher	\$2.91

subject to the minimum quarterly charge required in Subsection B below.

- (2) Ordinance 10-2009 previously adopted on March 23, 2009 referenced the Cost of Living Adjustment (COLA) as the amount of rate increase to be implemented each year. All references to the COLA are entirely deleted.

WHEREAS, Borough Chief Financial Officer has further recommended that Section 190-32 B of the Borough Code be amended to further reflect the following new rates:

Meter Size (inches)	For Any Amount of Water Furnished Not in Excess of (Cubic Feet)	Minimum Charge (per quarter)
5/8	805	\$20.29
3/4	805	\$20.29
1	2,010	\$52.07
1½	4,021	\$108.11
2	6,433	\$178.30
3	7,343	204.78
4	11,801	\$334.51
6 and greater	22,286	\$639.62

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WHEREAS, the Borough Council, after due consideration has determined to proceed with said recommendation.

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 190-32 of the Borough Code entitled “Water Rates for Metered Service” is hereby amended to revise the water utility rates as set forth herein.

SECTION 2: All other rates and terms remain the same, except those changed herein.

SECTION 3: This Ordinance shall take effect on February 1, 2010.

Ms. Baillie moved that Ordinance 58-2009, which the Acting Borough 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: Ms. Baillie, Mr. Elias, Mr. Conley
Mrs. Tsukamoto, Dr. Esposito, Mr. Cerciello
Nays: None

ORDINANCE 59-2009

ORDINANCE OF THE BOROUGH OF MADISON AMENDING SECTION 155-18B OF THE BOROUGH CODE ENTITLED “SEWER USE CHARGE” TO INCREASE SEWER USE CHARGE FOR TAX-EXEMPT PROPERTIES

WHEREAS, the Chief Financial Officer has recommended that the sewer use charge for tax-exempt properties be increased by nine (9%) percent to reflect the increased costs associated with such charges; and

WHEREAS, the Borough Council has determined that there is a need to approve 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, that Chapter 155 of the Borough Code entitled “Sewers” shall be amended as follows:

SECTION 1:

§ 155-18 Sewer use charge established; rate; exception.

A.

B. The sewer use charge shall be billed at a rate of \$0.0520 per cubic foot of water

consumed...

SECTION 2: All other provisions of the Ordinance not inconsistent herewith shall remain the same.

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SECTION 3: The increase shall be effective for all meter reads as of January 1, 2010.

Ms. Baillie moved that Ordinance 59-2009, which the Acting Borough 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: Ms. Baillie, Mr. Elias, Mr. Conley
Mrs. Tsukamoto, Dr. Esposito, Mr. Cerciello
Nays: None

CONSENT AGENDA RESOLUTIONS

The Acting 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.

Ms. Baillie moved adoption of Resolutions R 278-2009 through R 288-2009 on the Consent Agenda. Mr. Elias seconded the motion. There was no Council discussion, and the motion passed with the following roll call vote recorded:

Yeas: Ms. Baillie, Mr. Elias, Mr. Conley
Mrs. Tsukamoto, Dr. Esposito, Mr. Cerciello
Nays: None

R 278-2009

RESOLUTION OF THE BOROUGH OF MADISON APPROVING RAFFLES LICENSE APPLICATION SUBMITTED BY PTO CENTRAL AVENUE SCHOOL

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:

PTO CENTRAL AVENUE SCHOOL

I.D. No. 274-5-23982

R.A. No. 1133 – Off Premise

April 5, 2010

BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded to the Legalized Games of Chance Control Commission.

R 279-2009

RESOLUTION OF THE BOROUGH OF MADISON AUTHORIZING ACCEPTANCE OF THE MORRIS COUNTY OPEN SPACE TRUST FUND GRANT BY THE BOROUGH OF MADISON FOR THE BAYLEY ELLARD FIELDS

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WHEREAS, the Borough of Madison has been awarded a 2009 Morris County Open Space Trust Fund Grant entitled “Bayley – Ellard Fields” from the County of Morris in the amount of \$1,750,000.00; and

WHEREAS, the Borough Administrator has recommended that said grant be accepted and the grant agreement be executed.

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 Mayor and Borough Clerk are authorized to execute a grant agreement between the Borough of Madison and the County of Morris for a 2009 Morris County Open Space Trust Fund Grant entitled “Bayley – Ellard Fields” in the amount of \$1,750,000.00, in a form approved by the Borough Attorney.

R 280-2009

RESOLUTION OF THE BOROUGH OF MADISON APPROVING CHANGE ORDER #1, #2 AND #3 FOR THE HDM

WHEREAS, a contract for the rehabilitation of the Hartley Dodge Memorial, in an amount not to exceed \$6,317,000 was awarded to Merrell & Garaguso, Inc., by Resolution 124-2009; and

WHEREAS, the Borough Administrator has recommended ratifying the approval of a Change Order #1 to the contract authorizing alternates 6, 7 and 8, with no change to the total contract price; and

WHEREAS, the Borough Administrator has recommended ratifying the approval of a Change Order #2 to the contract for additional asbestos abatement, in an additional amount of \$169,606.00; and

WHEREAS, the Borough Administrator has recommended ratifying the approval of a Change Order #3 to the contract for additional general conditions associated with asbestos, in an additional amount of \$45,600.00; and

WHEREAS, the Director of Finance has attested to the availability of funds in an amount not to exceed \$215,206.00 for this purpose, which funds were appropriated by Ordinance 58-2008.

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 change order requests #1, #2 and #3 from Merrell & Garaguso, Inc., in the total amount not to exceed \$215,206.00 for the rehabilitation of the Hartley Dodge Memorial are ratified.

R 281-2009

RESOLUTION OF THE BOROUGH OF MADISON APPROVING AMENDMENT TO THE PROFESSIONAL SERVICE AGREEMENT FOR HMR ARCHITECTS FOR THE HDM IN THE AMOUNT OF \$98,984.00

WHEREAS, a professional services contract was previously awarded to Holt Morgan Russell Architects, P.A., (“HMR”) for professional architectural services in regard to the renovation of the Hartley Dodge Memorial, which contract was last amended pursuant to R 224-2008; and

WHEREAS, the Borough Administrator has recommended an amendment to the existing professional services contract with Holt Morgan Russell Architects, P.A., be made regarding professional architectural services for the Hartley Dodge Memorial renovation pursuant to a written proposal dated October 26, 2009 from HMR regarding anticipated additional site visits as well as services and costs required for Owner-requested further changes and additions; and

WHEREAS, the HMR proposal provides for an additional fee in the amount of \$98,984.00; and

WHEREAS, such services constitute professional services for which a contract may be awarded without the need of competitive bidding pursuant to N.J.S.A. 40A:11-5(1)(a); and

WHEREAS, the Purchasing/Personnel Officer has determined and certified in writing that the value of this acquisition will exceed \$17,500.00; and

WHEREAS, Holt Morgan Russell Architects, P.A., has submitted to the Borough Purchasing Agent, the required documents to satisfy the requirements of N.J.S.A. 19:44A-20.5, since this matter may be awarded without competitive bidding; and

WHEREAS, the Director of Finance has attested to the availability of funds in an amount not to exceed \$98,984.00 for this purpose.

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:

1. The Mayor and Borough Clerk are authorized to execute on behalf of the Borough an amendment to the professional services contract with Holt Morgan Russell Architects, P.A., for architectural services for the Hartley Dodge Memorial renovation, in an amount not to exceed \$98,984.00 in a form acceptable to the Borough Attorney.
2. The Business Disclosure Entity Certification and Determination of Value shall be placed on file with this resolution.

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3. The Borough Clerk is hereby directed to publish notice of the adoption of this resolution in the official newspaper of the Borough of Madison within ten (10) days of its adoption pursuant to N.J.S.A. 40A:11-5.

R 282-2009

RESOLUTION OF THE MADISON BOROUGH COUNCIL AWARDING ELECTRIC MATERIALS BID TO SUMMIT ELECTRIC SUPPLY IN THE AMOUNT OF \$17,703.50 AND TURTLE & HUGHES IN THE AMOUNT OF \$14,204.86 AND SPECTRUM POWER PRODUCTS IN THE AMOUNT OF \$21,057.04

WHEREAS, the Borough of Madison publicly advertised for bids for the purchase of Electric Department materials in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.; and

WHEREAS, four bids were received for various electric materials for the Electric Department; and

WHEREAS, one of the bids received did not contain original signatures, and the bid must be therefore rejected; and

WHEREAS, three qualified bids were received from Turtle & Hughes, Inc., of Bridgewater, New Jersey, Spectrum Power Products, LLC of Bath, Pennsylvania, and Summit Electric Supply Co. of Summit, New Jersey; and

WHEREAS, the Electric Utility Supervisor has recommended that the Borough Council award a contract for certain electric materials to Turtle & Hughes, Inc., for the Electric Department in an amount not to exceed \$14,204.86 and a contract for certain electric materials to Spectrum Power Products, LLC in an amount not to exceed \$21,057.04 and a contract for certain electric materials to Summit Electric Supply Co. in an amount not to exceed \$17,703.50; and

WHEREAS, the Director of Finance has attested that funds will be available in an amount not to exceed \$52,965.40 for this purpose.

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:

1. The contract for the purchase of certain electric materials for the Electric Department is hereby awarded to each of the following: Turtle & Hughes, Inc. in an amount not to exceed \$14,204.86; Spectrum Power Products, LLC in an amount not to exceed \$21,057.04 and Summit Electric Supply Co. in an amount not to exceed \$17,703.50.

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2. The Mayor and Borough Clerk are hereby authorized and directed on behalf of the Borough to enter into contracts with Turtle & Hughes, Inc., Spectrum Power Products, LLC, and Summit Electric Supply Co., in a form acceptable to the Borough Attorney.

R 283-2009

RESOLUTION OF THE BOROUGH OF MADISON AUTHORIZING SUBMISSION OF A GRANT APPLICATION TO THE MORRIS COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM TO INSTALL/REPAIR SIDEWALKS AND APRONS ALONG COOK AVENUE IN THE AMOUNT OF \$80,000.00

WHEREAS, the Borough Administrator has recommended to the Borough Council that a County of Morris Community Development Block Grant (CDBG) as described herein be submitted to the Morris County Division of Community Development; and

WHEREAS, the Borough Administrator has recommended that a CDBG application in the amount of \$80,000.00 be filed for installation and repair of sidewalks and aprons along Cook Avenue; and

WHEREAS, the recommendation has been considered at the Regular Public Meeting of the Borough Council on November 23, 2009.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Madison, County of Morris and State of New Jersey, that the Borough Administrator is hereby authorized to file the above-described Community Development Block Grant Application and the Mayor is authorized to sign the certification of the Grant application.

R 284-2009

RESOLUTION OF THE BOROUGH OF MADISON AUTHORIZING MERCHANT PARKING IN KINGS ROAD LOT #3 FOR THE HOLIDAY SEASON

WHEREAS, the Main Street Executive Director has recommended that merchants and merchant employees be permitted to park in a section of Kings Road Lot 3 (behind the Fire & Police Building) without charge from now until the end of the year; and

WHEREAS, the Main Street Executive Director has also recommended that 2 hour parking be permitted in all 1 hour parking spaces from now through December 31, 2009.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Madison, County of Morris, and State of New Jersey, that merchants and merchant

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employees are permitted to park without charge in a section of Kings Road Lot 3 (behind the Fire & Police Building), and 2 hour parking shall be permitted in all 1 hour parking spaces, effective immediately and extending through December 31, 2009.

R 285-2009

RESOLUTION OF THE BOROUGH OF MADISON APPROVING PERSONNEL MANUAL

WHEREAS, the Morris Joint Insurance Fund (“JIF”) has made certain recommendations for revisions to the Borough personnel policies; and

WHEREAS, the Borough Labor Attorney has reviewed those recommendations and prepared a revised Personnel Policies and Procedures Manual and revised Employee Handbook; and

WHEREAS, the Borough Administrator has recommended adoption of the revised Personnel Policies and Procedures Manual and revised Employee Handbook; and

WHEREAS, the Borough Council has determined to adopt such recommendations.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Madison, in the County of Morris in the State of New Jersey that the revised Personnel Policies and Procedures Manual (Rev 03(11-09)) and the revised Employee Handbook (Rev 03(11-09)) as described herein are hereby adopted and the Purchasing/Personnel Officer is authorized to provide any required notice to employees.

R 286-2009

RESOLUTION OF THE BOROUGH OF MADISON AWARDING BID FOR LEAF REMOVAL FOR 2009 TO TULLY ENVIRONMENTAL OF FLUSHING, NEW YORK IN THE AMOUNT OF \$88,750.00

WHEREAS, the Borough of Madison publicly advertised for bids for removal and proper recycle of leaves (the “Contract”) in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.; and

WHEREAS, the lowest qualified bid was submitted by Tully Environmental of Flushing, New York in the amount of \$88,750.00 for Option B; and

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WHEREAS, the Purchasing/Personnel Officer has recommended that the Borough Council award the contract to Tully Environmental of Flushing, New York in the amount of \$88,750.00; and

WHEREAS, the Director of Finance has attested that funds will be available in an amount not to exceed \$88,750.00 for this purpose in the Public Works operating budget.

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:

1. The contract for removal and proper recycle of leaves is hereby awarded to Tully Environmental of Flushing, New York based upon its bid in the amount of \$88,750.00.

2. The Mayor and Borough Clerk are hereby authorized and directed on behalf of the Borough to enter into the contract with Tully Environmental of Flushing, New York in a form acceptable to the Borough Attorney.

R 287-2009

RESOLUTION OF THE BOROUGH OF MADISON APPROVING 2009 TAXI OWNER'S LICENSES NOS. 19, 20, AND 21 FOR MADISON SQUARE TRANSPORTATION, INC.

WHEREAS, in compliance with the provisions of Chapter 173 of the Borough Code, applications for Taxi Licenses have been submitted by Javier Flores of Madison Square Transportation Inc., 36 Lincoln Place, Madison, New Jersey; and

WHEREAS, the above applicant has complied with all requirements of the State Law and above-mentioned Ordinance;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Borough of Madison, County of Morris, State of New Jersey, that Taxi Licenses Nos. 19, 20 and 21 be issued to Javier Flores, t/a Madison Square Transportation Inc., contingent upon the stipulations in the attached November 23, 2009 letter from Zoning Officer Frank Russo and receipt of an updated Insurance Certificate. The licenses will be effective upon Council approval and through December 31, 2009.

R 288-2009

RESOLUTION OF THE BOROUGH OF MADISON APPROVING 2009 TAXI DRIVER'S PERMITS NOS. 7, 8, AND 9 FOR JAVIER FLORES, EDGARDO DUARTE AND BERNARDO BRUN OF MADISON SQUARE TRANSPORTATION, INC.

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WHEREAS, in compliance with the provisions of Chapter 173 of the Borough Code, applications for Taxi Driver's Permits for Madison Square Transportation Inc. have been made by Javier Flores, 55 Fairfield Avenue, Fords, NJ, Edgardo Duarte, 20A Belmont Avenue, Madison, NJ, and Bernardo Brun, 227 Carlton Avenue, Piscataway, NJ; and

WHEREAS, the above applicants have complied with all requirements of the State Law and above-mentioned Ordinance;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Borough of Madison, County of Morris, State of New Jersey, that Taxi Driver's Permits be issued, effective upon Council approval and through December 31, 2009, as follows:

Permit No. 7	Javier Flores
Permit No. 8	Edgardo Duarte
Permit No. 9	Bernardo Brun

Mr. Mezzacca read Resolution R 289-2009 in full into the record.

R 289-2009

RESOLUTION OF THE BOROUGH OF MADISON AUTHORIZING MAYOR TO SIGN CONSENT FOR APPLICATION BY 13 MADISON AVENUE, LLC, REGARDING PROPERTY AT 13 MADISON AVENUE, MADISON, NEW JERSEY, BLOCK 1401, LOT 2

WHEREAS, 13 Madison Avenue, LLC has requested that the Mayor be authorized to sign a consent for an application to the Madison Zoning Board of Adjustment or Planning Board by 13 Madison Avenue, LLC, regarding property at 13 Madison Avenue, Madison, New Jersey, Block 1401, Lot 2, which is adjacent to property owned by the Borough of Madison, to confirm the Borough is agreeable to an access easement over the existing driveway on the Borough property ("James Park") that runs from Madison Avenue to the James Park electric substation immediately adjacent to 13 Madison Avenue, in connection with an application to obtain a use variance for offices on the first floor and a residence on the second floor as well as site plan approval; and

WHEREAS, such application would not contain any proposed public parking on the James Park property; and

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WHEREAS, the Council having considered the request of 13 Madison Avenue LLC, is agreeable to provide consent for application to the Zoning Board of Adjustment, in regard to a potential easement for access on the James Park Property; and

WHEREAS, the Council is amenable to authorizing the Borough Attorney to negotiate an agreement with 13 Madison Avenue, LLC, to be considered by the Borough Council at its next Council meeting on December 14, 2009, regarding an access agreement to be entered into between the parties subject to the Zoning Board application approval and on such conditions as the Borough and the Applicant agree to.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Madison, County of Morris, and State of New Jersey, that the Mayor be authorized to sign a consent for a Zoning Board/Planning Board application for the property at 13 Madison Avenue insofar as it concerns a potential access easement over James Park, and the Borough Attorney is authorized to negotiate an agreement as described herein for consideration by the Mayor and Council at the next Council meeting on December 14, 2009.

Ms. Baillie moved adoption of Resolution R 289-2009. Mr. Elias seconded the motion. There was no Council discussion, and the motion passed with the following roll call vote recorded:

Yeas: Ms. Baillie, Mr. Elias, Mr. Conley
Mrs. Tsukamoto, Dr. Esposito, Mr. Cerciello
Nays: None

INVITATION FOR DISCUSSION (2 of 2)

Mrs. Tsukamoto opened the meeting to the public for their opportunity to ask questions and make comments on any subject. Mrs. Tsukamoto 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.

Eugene Zipper, Greenwood Avenue, asked for clarification of the withdrawn Electric Utility rate increase ordinance.

Jim Burnet, Borough of Madison Main Street Executive Director, wished to thank Electric Utility Superintendent Michael Piano and his staff for their professionalism in installing a permanent cable across Main Street for promotional banners.

Tim Harrington, Cross Gates Road, inquired about franchise fees for the Electric Utility. Mr. Harrington asked about the ditch in front of the Madison Public Library. Mr. Conley noted that plants are holding the amount of erosion, but will take another

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look. Mr. Harrington offered a suggestion to discuss the budget in terms of cost breakdown so it could be better understood by residents.

UNFINISHED BUSINESS - None

APPROVAL OF VOUCHERS

On motion by Mrs. Tsukamoto, seconded by Ms. Baillie 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	\$18,072.38
Health & Public Assistance	7,656.72
Public Works & Engineering	132,592.95
Community Affairs	2,724.76
Finance & Borough Clerk	3,761,421.40
Utilities	<u>1,334,601.37</u>
Total	<u>\$5,257,069.58</u>

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

Yeas: Ms. Baillie, Mr. Elias, Mr. Conley
Mrs. Tsukamoto, Dr. Esposito, Mr. Cerciello
Nays: None

NEW BUSINESS

Mr. Conley noted a vacancy on the Board of Education Shared Services Committee and nominated Mrs. Tsukamoto, seconded by Ms. Baillie, and the motion passed with the following roll call vote recorded:

Yeas: Ms. Baillie, Mr. Elias, Mr. Conley
Mrs. Tsukamoto, Dr. Esposito, Mr. Cerciello
Nays: None

ADJOURN AND RECONVENE EXECUTIVE SESSION

There being no further business to come before the Council, the meeting was adjourned at 9:15 p.m. and the Executive Session immediately reconvened.

RECONVENE AND ADJOURN

The Regular Meeting reconvened at 10:40 p.m. and immediately adjourned.

Respectfully submitted,

Elizabeth Osborne
Acting Borough Clerk
Approved December 14, 2009 (EO)