

LEGISLATIVE MINUTES

MARLBORO TOWNSHIP COUNCIL MEETING

March 19, 2009

The Marlboro Township Council held its regularly scheduled meeting on March 19, 2009 at 8:00 P.M. at the Marlboro Municipal Complex, 1979 Township Drive, Marlboro, New Jersey.

Council President Rosenthal opened the meeting and announced that pursuant to the provisions of the Open Public Meetings Act, notice of this regularly scheduled meeting of the Township Council of the Township of Marlboro was faxed to the Asbury Park Press, the Star Ledger and News Transcript on January 2, 2009; faxed to the Board of Education Office; posted on the Bulletin Board of the Municipal Building posted on the Marlboro Township Website, and filed in the office of the Municipal Clerk.

The Clerk called the Roll.

PRESENT: Councilman Cantor, Council Vice President LaRocca Councilwoman Marder, Councilwoman Tragni and Council President Rosenthal.

Also present were: Mayor Jonathan L. Hornik, Jonathan Williams, Esq., Business Administrator Alayne Shepler, Municipal Clerk Alida Manco, and Deputy Clerk Deborah Usalowicz.

Councilman LaRocca moved that the minutes of February 12 and 19, 2009 be approved. This motion was seconded by Councilwoman Marder and the minutes were passed on a roll call vote of 5 - 0 in favor.

The following Res. # 2009-108/Ord. # 2009-7 As Amended (Replacing Chapter 91 - Mobile Homes Rent Control) was introduced by reference, offered by Councilwoman Tragni and seconded by Councilman Cantor and was passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2009-108

BE IT RESOLVED by the Township Council of the Township of Marlboro that an Ordinance entitled:

ORDINANCE # 2009-7 (As Amended)

AN ORDINANCE DELETING CHAPTER 91 "MOBILE HOME COMMUNITIES RENT CONTROL", OF THE CODE OF THE TOWNSHIP OF MARLBORO IN ITS ENTIRETY AND REPLACING SAME WITH A NEW CHAPTER 91, "MOBILE HOME COMMUNITIES RENT CONTROL" THEREBY IMPLEMENTING THE RECOMMENDATIONS OF THE MARLBORO TOWNSHIP AFFORDABLE HOUSING AND RENT CONTROL BOARD

be introduced and passed on first reading and that the same be advertised according to law; and

BE IT FURTHER RESOLVED that the same be considered for final passage on April 2, 2009 at 8:00 p.m. at the Marlboro Municipal Complex, 1979 Township Drive, Marlboro, New Jersey, at which time all persons interested will be given an opportunity to be heard concerning said ordinance.

ORDINANCE # 2009-7 (As Amended)

AN ORDINANCE DELETING CHAPTER 91 "MOBILE HOME COMMUNITIES RENT CONTROL", OF THE CODE OF THE TOWNSHIP OF MARLBORO IN ITS ENTIRETY AND REPLACING SAME WITH A NEW CHAPTER 91, "MOBILE HOME COMMUNITIES RENT CONTROL" THEREBY IMPLEMENTING THE RECOMMENDATIONS OF THE MARLBORO TOWNSHIP AFFORDABLE HOUSING AND RENT CONTROL BOARD

BE AND IT IS HEREBY ORDAINED, by the Township Council of the Township of Marlboro, County of Monmouth and State of New Jersey, that Chapter 91, Mobile Home Communities Rent Control, of the Code of the Township of Marlboro be and is hereby deleted in its entirety and is hereby replaced with a new Chapter 91, Mobile Home Communities Rent Control, to implement the recommendations of the Marlboro Township Affordable Housing and Rent Control Board as follows:

MOBILE HOME RENT CONTROL LAW - CHAPTER 91

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§ 91-1. Declarations.

The following matters and things are hereby determined, declared and recited:

A. A compelling situation exists within the Township of Marlboro with respect to the rental of mobile home spaces and mobile homes in mobile home communities by reason of the demands for increases in rent in that such increases are causing severe hardships upon tenants in such mobile home communities and are adversely affecting the health, safety and general welfare of the citizens of the Township of Marlboro warranting legislative action by the Township Council.

B. The number of mobile home communities and spaces permitted within the Township has been limited by the Township Council so as to achieve a balance in the types of housing permitted in the Township, and it is desirable to maintain such balance, and the present situation cannot be corrected by increasing the number of mobile home communities alone.

C. By reason of the necessity of licensing mobile home communities, mobile home community operators enjoy an unintended monopoly which may be abused by the charging of unregulated excessive rents.

D, Regulations of rent in mobile home communities will serve to prevent abuses and at the same time ensure the benefits of

balanced housing and regulation achieved by licensing of mobile home communities and limitation of their number.

E. The Township has the power to so regulate rents in mobile home communities pursuant to the provisions of N.J.S.A. 40:52-1 et seq. bestowing general power to regulate mobile home communities and the provisions of N.J.S.A. 40:48-2 bestowing power to enact ordinances for the preservation of the public health, safety and welfare of the Township and its inhabitants, pursuant to which grant of powers this Chapter is enacted.

F. A policy of resolution of fair-rental-charge disputes by open communication, discussion and negotiation between mobile home community operators and their tenants is to be encouraged, in that it will serve to minimize the governmental regulation and intrusion into the citizens' private business and domestic affairs.

G. In a democratic society, it is a fundamental premise that the will and wishes of the majority shall serve to bind all members of a group with a community interest, be that group large or small.

§ 91-1.5 Application of Chapter 91.

A. From and after the effective date of this Chapter, or as it is amended from time to time, it shall be unlawful for any landlord to demand or receive any rent for any mobile home space in excess of the base rent in effect for such mobile home space, except in conformity with the provisions of this Chapter.

B. A landlord shall be entitled to a just and reasonable return based either on the landlord's investment, as defined by this chapter, or such other methods as approved by the courts or Legislature of the State of New Jersey.

§ 91-2. Definitions

As used in this Chapter, the following terms shall have the meanings indicated:

BASE RENT -- The gross rent for the mobile home pad or lot in effect on the effective date of this Chapter. Thereafter "base rent" shall equal this charge as is lawfully increased in conformance with the provisions of § 91-5 of this Chapter. "Base rent" shall not include tax and cost pass-throughs pursuant to § 91-6, hardship rental increase applications pursuant to § 91-8 and capital improvements pursuant to § 91-7.

CONSUMER PRICE INDEX - The Consumer Price Index (CPI) (all items) for the New York - Northwest New Jersey - U Region of the United States of which the Township of Marlboro, Monmouth County, New Jersey, is a part, published periodically by the Bureau of Labor Statistics, United States Department of Labor.

INCREASE -- Not only an increase in rent but any increase in or addition to the rent or any other charges made by the landlord to the tenant and shall include any diminution of services rendered as an incident to the letting or occupancy from the effective date of this Chapter.

INVESTMENT -- Includes the amount of the original cash or equivalent consideration paid upon acquisition, together with such other additional capital contributed after the date of acquisition. "Investment" shall not include the principal amount of any mortgage or mortgages.

LANDLORD -- The mobile home community operator, owner, lessor, sub-lessor, receiver, trustee, executor, assignee or other person owner or other person leasing a mobile home space to a tenant.

LEASE -- Includes written or verbal leases, licenses or other arrangements, agreement or understanding pursuant to which any person or persons is permitted to occupy a mobile home space.

MOBILE HOME SPACE -- Includes that portion of a trailer or mobile home park or community with incidental services, or a mobile home situate in a portion of a trailer or mobile home park or community, rented or offered for rent, for the purpose of parking a trailer or mobile home thereon or occupying a mobile home for living or dwelling purposes, to one (1) or more individuals or family units, together with all privileges, services, equipment, facilities and improvements connected with the use or occupancy of such space or mobile home.

REASONABLE AND NECESSARY OPERATING EXPENSES -- Those expenses reasonably incurred by a landlord in the day-to-day operation of a mobile home park or community. It shall not include capital improvements, mortgage amortization or depreciation.

RENT -- Includes any charge or charges made, fixed, demanded or charged for the use or occupancy of a mobile home space, whether or not commonly known as "rent."

§ 91-3. Rent Increase Applications.

A. Rent increases may be allowed by the Rent Control Board upon written application thereto by the landlord in the manner and for the reasons set forth in this Chapter. All applications for rent increases brought under this Chapter shall be filed on written forms which may be obtained from the Rent Control Board Secretary.

B. The provisions of this Chapter shall allow for the following forms of rent increase:

- (1) Consumer Price Index (CPI) (§ 91-5);
- (2) Tax pass-through (§ 91-6);
- (3) Capital Improvement (§ 91-7); and
- (4) Hardship (§ 91-8).

C. A landlord filing a rent increase application under any Section of this Chapter shall file an original and seven (7) copies of said application with the Secretary to the Rent Control Board along with payment of the appropriate fee pursuant to § 9-19.

D. The Rent Control Board Secretary, upon receipt of any application for a rent increase brought under any Section of this Chapter, shall review said application for completeness and determine whether the following, if applicable, has either been filed or paid:

- (1) Written application for rent increase (original and seven (7) copies);
- (2) Payment of the filing fee established in § 91-19;
- (3) Certifications of compliance and taxes pursuant to § 91-4;
- (4) Appropriate notice and disclosure of information to all affected tenants for increases sought pursuant to §§ 91-5, 6, 7 or 8;
- (5) Notice of hearing to tenants pursuant to § 91-10;
- (6) Proof of service upon affected tenants as required by § 91-10; and

(7) Any other required documents, fees, or proofs required by this Chapter.

E. Should the Secretary of the Rent Control Board deem that the application is incomplete for the failure of the landlord to pay any required filing fee(s) or provide any documentation or proofs required under this Chapter for the filing of an application, the Rent Control Board, in that event, reserves the right to adjourn the listing of said application until such time as the fee, documentation or proof is provided. A determination that an application is complete shall in no way be construed to mean that the application shall be granted by the Rent Control Board.

F. Should the Secretary of the Rent Control Board deem that the application is complete, a hearing for the matter shall then be scheduled for the next regularly scheduled public hearing at which a voting quorum is present.

§ 91-4 Certification of Compliance And Taxes.

A. No rent increase of any kind may be awarded by the Rent Control Board under this Chapter unless such application includes a certification from the landlord that the mobile home park substantially complies with the Municipal Ordinances of the Township of Marlboro pertaining to mobile home parks as well as any other applicable Marlboro Township ordinances.

B. No rent increase of any kind may be awarded by the Rent Control Board until such time as the Board is in receipt of a certification from the municipal tax collector that all real property taxes and assessments have been paid pertaining to the property on which the mobile home park or community is located. It is the responsibility of the landlord to obtain and provide this certification with his application when it is filed with the Rent Control Board.

C. No rent increase of any kind may be awarded by the Rent Control Board until such time as the Board is in receipt of certification from the Marlboro Township Municipal Clerk that the applicant has complied with the licensing provisions of Chapter 92 of the Marlboro Township Ordinances. It is the responsibility of the landlord to obtain and provide this certification with his application when it is filed with the Rent Control Board.

§ 91-5. Consumer Price Index Increase.

A. Calculation of increase. Upon submission of an application that is deemed complete and at the close of a hearing or hearings as provided for in Sections 91-3 and 91-10 of this Ordinance, and conditioned upon the landlord's compliance with (i) Section 91-4 and 91-5 herein and (ii) upon the landlord's presentation of proof of compliance with Chapter 92 which includes the landlord furnishing a true copy of a license to operate, a landlord shall receive on an annual basis a percentage increase of the Consumer Price Index based on the percentage increase in the Consumer Price Index over the twelve (12) month period ending 120 days prior to the date of the effective date of the increase. In no event shall such annual percentage increase exceed a maximum of five percent (5%). The percentage of allowable increase calculated hereunder shall be applied to the tenant's existing base rent.

B. Limitation on frequency of increase. No landlord shall be given more than one (1) increase in rent under this Section (§ 91-5) in any twelve (12) month period. This limitation shall not in any way affect other permitted rent increases pursuant to the terms of this Chapter.

C. Notice to tenants of increase. Any landlord seeking an increase in rent under this Section shall make application to the Rent Control Board, and serve the affected tenants with a notification, which shall clearly set forth the following information:

- (1) A calculation of the allowable percentage increase in rent pursuant to this Section.
- (2) A calculation of the amount of the allowable rental increases rounded to nearest dollar.
- (3) A calculation of the tenant's rent for the new leasing term.
- (4) The date of the anticipated implementation of the increase.
- (5) The landlord certification that he or she is in full compliance with all applicable building, maintenance and housing codes.

§ 91-6 Tax and cost pass-through increase.

- (A) A landlord shall be entitled to collect from each tenant the proportionate share per pad or space of any increase in real estate taxes, state licenses, municipal licenses, municipal pad fees and utilities, if the utilities are provided or paid for by the landlord. The proportionate share shall be equal to the increase divided by the total number of occupied pads or spaces in the mobile home park or community.
- (B) Any landlord seeking an increase under the provisions of this Section shall provide all affected tenants with notice of said application which shall include a statement identifying the date that the increase will take effect, the method of calculating the increase, a statement of the tax, fee, license or utility paid by the landlord for the previous year, and a statement as to the increase in the taxes, fees, licenses, or utilities as applicable to each affected tenant.

§ 91-7. Capital Improvement Increase.

A. A landlord may apply to the Rent Control Board for additional rental charges for the payment of the reasonable cost of major capital improvements which are necessary for the proper operation of the mobile home park or community upon completion of said capital improvement(s). However, no landlord shall be entitled to a rent increase for any capital improvement(s) which were completed two (2) years prior to the application for the rent increase under this Section.

B. For the purpose of this Section, "capital improvements" shall be any item considered as such under the United States Internal Revenue Service enactments and regulations. The replacement of an existing item or facility with an item or facility which has a more serviceable and useful life shall be considered a capital improvement unless the Board, in its discretion, determines that such replacement consists of normal and necessary maintenance and repairs.

C. An owner seeking a rent increase for a capital improvement shall apply in conformance with the application and notification provisions of this Chapter. The Rent Control Board shall determine if said improvement is a necessary major capital improvement and, if so, the amount of the increase granted for such major improvement, and shall establish the term and conditions of such increase. In determining the term and conditions of the increase, the Rent Control Board shall consider the total cost of the improvement,

including interest expense, the useful life of the improvement and the reasonable time necessary for the landlord to recover his costs.

D. The cost of expanding or enlarging the mobile home community or a Section thereof shall not be borne by the tenants or utilized in computing additional rental charges under this Section.

E. Any landlord seeking an increase under this Section shall provide to each affected tenant the total cost of the completed capital improvement, the number of years of useful life of the improvement as claimed by the landlord for purposes of depreciation for income tax purposes, the average cost, including debt service, of the improvement, and, the amount of the capital improvement surcharge that the landlord is seeking from each affected tenant.

F. In no event shall any increase under the provisions of this Section exceed fifteen percent (15%) of the annual rent paid by the affected tenant unless the capital improvement is mandated by law.

§ 91-8 Hardship increase.

A. When an efficient landlord finds that the gross maximized income from his property is insufficient to cover the cost of interest payments on a first mortgage or purchase money mortgage, and on any subsequent mortgages the proceeds of which have been used to improve and upgrade the rental property; for reasonable and necessary operating expenses incurred in connection with the rental property or mobile home park; or, for unusual or unexpected increases in the cost of providing heat or utilities or in the making of capital expenditures or improvements which may require a substantial investment or expenditure by the landlord to offset such expenses, such landlord may seek a hardship rental increase. The Rent Control Board may grant a hardship rent increase to meet these payments.

B. The Rent Control Board shall consider all relevant evidence, including conditions of the premises, the degree of hardship to the landlord and financial records explaining the mortgage, tax or maintenance expense. Any landlord seeking a hardship increase shall petition the Rent Control Board after serving notice upon the tenants of his intent to seek a hardship increase and after full disclosure of all relevant financial information to the tenants and Board. The Rent Control Board shall give reasonable opportunity to be heard to both the landlord and the tenant(s) before making a determination.

C. Any application based upon unusual or unexpected increases shall be allowed only for good cause shown. Clear proof of the cost must be furnished. If the increase sought concerns a capital expenditure, capital improvement or major repair requiring a substantial investment, the landlord shall prove the normal economic life expectancy of the expenditure, improvement or repair and shall determine the average cost per year of economic life. In no event shall the cost of expanding or enlarging the rental property or a portion thereof be borne by the tenants. If the increase sought is the result of an increase in the cost of providing a utility service regulated by the Board of Public Utilities of the State of New Jersey, the landlord shall prove that the cost of providing such utility service has increased by more than 6.5% per annum. Upon such proof, the landlord may be entitled to a rental increase equal to the amount by which the cost of providing such utility service exceeds 6.5% more than the prior years cost. The landlord shall also present evidence in seeking an increase pursuant to this Section concerning the actual rent being charged for each unit, a profit-and-loss statement for the premises for the past two fiscal years, the condition of the premises, the rate of return on the landlord's investment and the steps taken to provide safe, healthful and adequate housing, in addition to any other evidence that will assist the Board in making a fair decision. The Rent Control Board shall utilize all of the above information in determining whether or not to permit the additional rent increase sought.

D. Any increase permitted by the Rent Control Board pursuant to this Section shall be effective retroactive to the first rental period at the expiration of thirty (30) days from the date that the landlord's application for an increase was filed with the Rent Control Board. Should the landlord revise his application for an increase based upon submission of expenses not related, in whole or in part, to the premises in question; or because the original application is substantially incorrect or incomplete or deviates from accepted accounting norms; or resulting in an increase in the amount of relief sought, then and in that event the increase permitted by the Rent Control Board shall be retroactive to the first rental period subsequent to thirty (30) days from the date the revised application is submitted to the Rent Control Board.

E. No landlord shall be permitted to receive an increase under this Section until such time as the landlord has owned and operated the rental property or mobile home park for a period of at least twelve (12) months or until the close of the first complete fiscal year of ownership by the landlord, whichever occurs first.

F. For purposes of this Section, the term "gross maximized annual income" shall mean the gross maximum potential rent roll, less a maximum deduction of 3.5% for vacancies and uncollectibles, or the annual sum of rents collected, whichever amount is larger, and includes all income resulting, directly or indirectly, from the operation of the mobile home park or community.

§ 91-9. Rent reduction.

A. A tenant whose rent has been increased may make written application to the Rent Control Board for a decrease of his rent to the base rental by filing an application with the Rent Control Board setting forth his name and address, the name and address of the landlord, the location and description of the leased premises, the rent paid from the effective date of this Chapter and the amount and date of each increase thereafter, the term of the lease and the reason why the tenant feels that the increase in rent was unjustified. In determining whether or not the increase was justified, the Rent Control Board shall apply the same criteria as this Chapter requires them to apply to a request for an increase.

B. In the event that the taxes or costs referred to in § 91-6 are reduced, fifty percent (50%) of the savings shall be passed on to the tenants. Should a reduction in real estate taxes be obtained by the landlord, through the tax appeal process, the fifty-percent (50%) savings shall be passed on to the tenants after the landlord deducts his reasonable and necessary documented attorney's or other professional fees and costs incident thereto incurred in obtaining said reduction.

C. Any tenant seeking relief under this Section shall file said application with the Board at least twenty-one (21) days before the date set for the hearing and shall serve a copy thereof upon their landlord in the manner provided for the service by a landlord of an application for a rent increase.

§ 91-10. Notice of Hearing.

A. Prior to any landlord being entitled to any relief under this Chapter, the landlord shall, not less than twenty-one (21) days in advance of the hearing date, be required to serve tenants with a notice of the time and place at which the Rent Control Board will hear the matter and shall make due proof of the service thereof by providing an affidavit of mailing.

B. Before the Rent Control Board may grant any relief pursuant to the terms of this Chapter, it shall first hold a hearing

upon the notice as prescribed herein and afford all parties a full opportunity to be heard and present any testimony relevant to the matter of the application before the Board.

C. All notices required to be provided under this Chapter to any tenant shall be effectuated by way of regular and certified mail, or, by way of personal service, with the landlord providing proof of service prior to the first hearing on any application. The proof of service must identify the method of service upon each and every affected tenant.

D. In addition to the notice required under paragraph C of this Section, any landlord seeking relief under this Chapter, with the exception of an increase based on vacancy decontrol, must provide proof of posting of a notice as to the time and date of hearing to all tenants within the mobile home park or community. Notice must be posted in a conspicuous place which is visible to all tenants.

§ 91-11. Vacancy decontrol.

A. Where there is a sale of a mobile home or where a lot or space becomes vacant as a result of the vacating of the mobile home rental space by a tenant, or where a tenant has vacated as a result of a lawful eviction proceeding, the landlord may increase the base rent by fifteen percent (15%), provided that the landlord shall not be entitled to more than one (1) such increase within any five (5) year period. When the landlord exercises its right to increase the base rent pursuant to this Section, the landlord shall waive its right during that year to an increase pursuant to § 91-5 of this Chapter and shall also waive its right during that year to the tax and cost pass-throughs pursuant to § 91-6 of this Chapter, with the following exception: if the increase under § 91-5 plus the tax and cost pass-throughs for the subject lot are greater than the fifteen-percent (15%) vacancy decontrol increase, then the landlord shall be entitled to the higher percentage of either the vacancy decontrol increase or the total of the increase and the tax and cost pass-throughs.

B. When the landlord raises rent pursuant to this Section, the landlord shall file a certified statement with the Rent Control Board confirming this increase. The statement shall include the amount of the base rent prior and subsequent to the increase. The Rent Control Board shall review said certification at its next regular meeting and, if it is satisfactory, shall approve the same. Unless the increase violates this Section, it shall be effective when the new tenant moves in.

C. Prior to any landlord being entitled to any increase under this Section, the landlord shall submit an affidavit stating that he or she has not in any way harassed or coerced the prior tenant from vacating the mobile home space and that the vacation of the mobile home space was a voluntary act of the tenant. For purposes of this Section, the removal of a tenant by way of eviction pursuant to the laws of the State of New Jersey shall constitute a "voluntary act." However, for purposes of this Section, a vacation caused or necessitated by substandard, unsafe, or unsanitary conditions within the mobile home community shall not be deemed a "voluntary act."

§ 91-12. Rent Control Board.

The Affordable Housing Agency created by § 5-3 of the Code of the Township of Marlboro shall serve as the Rent Control Board.

§ 91-13. Rent Control Board powers.

A. In addition to the powers enumerated in Chapter 5 of the Code of the Township of Marlboro, the Affordable Housing Agency is hereby granted and shall have and exercise all the powers necessary and appropriate to carry out and execute the purpose of this Chapter of the Code of the Township of Marlboro, including but not limited to the following:

- (1) (1) To issue and promulgate such rules and regulations as it deems necessary to implement the purposes of this Chapter. Provided that the Rent Control Board shall bring said rule or regulation to the attention of the Township Clerk who shall bring the proposed rule or regulation to the attention of the Township Council at its next regularly scheduled Council meeting. Should the Township Council object to any rule or regulation, the Council shall give notice to the Rent Control Board no later than ten (10) days after consideration of said rule or regulation at its Council Meeting. If a rule or regulation is objected to in a timely manner, the rule or regulation shall not be effective or enforceable. If the Township Council shall take no action concerning said rule or regulation, it shall become effective and enforceable on the tenth (10th) day after the Council meeting. All effective and enforceable rules and regulations shall thereafter be deemed to be part of this Chapter as fully as if set

forth herein and any violation thereof shall be a violation of this Chapter.

- (2) To supply information and assistance to landlords and tenants to help them comply with the provisions of this Chapter.
- (3) To hold hearings and adjudicate applications from landlords or tenants for adjustments of rental as herein provided.

B. A quorum for a hearing shall consist of three (3) voting members, and a vote of a majority of those present shall be necessary to take any action.

C. At all public hearings, the Rent Control Board shall give both landlord and tenant reasonable opportunity to be heard and to present witnesses before making any determination. The parties may be represented by counsel.

D. Action by the Rent Control Board shall be in writing and in the form of a resolution which shall contain findings of fact and conclusions of law as well as any conditions of approval. Violation of the term of any resolution adopted by the Board shall be a violation of this Chapter.

E. The Rent Control Board shall meet once a month. If there is no business pending the Board Chairman may cancel the meeting and shall provide public notice of same.

§ 91-14. Nonapplicability.

A. This Chapter shall not be applicable to any mobile home park or community that is operated on real property owned by the Township of Marlboro.

B. Mobile home spaces that are newly constructed are exempted from the provisions of this Chapter. In that case, the landlord may determine the initial rent thereof. Any future increases after the initial rental amount, however, are subject to the provisions of this Chapter.

C. Any mobile home space which is occupied by an employee of a landlord and the rental of which is customarily restricted to employees of the landlord is exempted from the provisions of this Chapter.

D. Where a mobile home space has been vacant for a period of twelve (12) or more months, the rent applicable to a new tenant taking possession following the (12) or more months is exempt from the provisions of this Chapter. However, any subsequent increases following the initial rental referenced herein shall be subject to the provisions of this Chapter.

§ 91-15. Nonprofit corporations

This Chapter shall not be binding on mobile home communities owned and operated as nonprofit corporations exempt from the Corporation Business Tax Act where the mobile home community is owner-occupied.

§ 91-16. Construal of provisions.

This Chapter being necessary for the welfare of the Township of Marlboro and its inhabitants, shall be liberally construed to effectuate the purposes thereof.

§ 91-16.5. Waiver.

A. Any person or entity may request a waiver from a specific requirement of this Chapter at any time. Such a waiver may be requested as part of a rent increase application or by application in such other form as the Rent Control Board may determine, consistent with this Chapter.

B. The Rent Control Board may grant a waiver from a specific provision of this Chapter if the applicant demonstrates that the strict application of this Chapter would create an unnecessary financial or administrative hardship or there is otherwise good cause for the Rent Control Board to grant a waiver from the provision(s) from which relief is sought. No waiver shall be granted under this Chapter if in so doing such relief does not foster the intent of this Chapter.

§ 91-17. Severability.

that if any section, paragraph, subsection, clause or provision of this Chapter shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provisions so adjudicated, and the remainder of the Chapter shall be deemed valid and effective.

§ 91-18. Violations and penalties.

Any person found guilty of violating any provision of this Chapter or of willfully filing with the Rent Control Board any material misstatement of fact shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment in the county jail for a term not exceeding ninety (90) days, or both, in the discretion of the court. A violation affecting two (2) or more mobile home spaces shall be considered a separate violation as to each mobile home space.

§ 91-19 Filing Fees.

The Rent Control Board shall charge the following filing fees for rent increase applications:

§ 91-5 CPI Rent Increase	\$250.00
§ 91-6 Tax Pass-Through Increase	\$250.00
§ 91-7 Capital Improvement Increase	\$250.00
§ 91-8 Hardship Rent Increase	\$250.00
§ 91-11 Vacancy Decontrol Increase	\$50.00

§ 91-20. When effective.

This Chapter shall become effective immediately upon passage and publication as required by law.

BE IT FURTHER ORDAINED, that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provisions so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective; and

BE IT FURTHER ORDAINED, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict; and

BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon passage and publication in accordance with applicable law.

Council President Rosenthal opened the Public Hearing on Ordinance # 2009-8 (Amend Chapter 92 - Mobile Homes - Licensing & Maintenance). As there was no one who wished to speak, the Public Hearing was closed. The following Res. # 2009-109/Ord. # 2009-8 (Amend Chapter 92 - Mobile Homes - Licensing & Maintenance) was introduced by

reference, offered by Councilwoman Tragni and seconded by Councilman Cantor. Discussion followed, during which Ronald Gordon, Esq. explained the ordinance and answered Council's questions. After discussion, the resolution/ordinance was passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2009-109

BE IT RESOLVED by the Township Council of the Township of Marlboro that an Ordinance entitled:

ORDINANCE # 2009-8

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 92 "MOBILE HOME COMMUNITIES: LICENSING AND MAINTENANCE", SECTION 92-3 "APPLICABILITY OF BUILDING, PLUMBING AND OTHER REGULATIONS", OF THE CODE OF THE TOWNSHIP OF MARLBORO TO DESIGNATE THE APPROPRIATE TOWNSHIP OFFICIAL FOR CODE INSPECTION PURPOSES

which was introduced on February 12, 2009, public hearing tabled on March 5, 2009 to March 19, 2009, be adopted on second and final reading this 19th day of March, 2009.

BE IT FURTHER RESOLVED that notice of the adoption of this ordinance shall be advertised according to law.

Council President Rosenthal opened the Public Hearing on Ordinance # 2009-9 (Amend Chapter 84 - MHD-II - Mobile Home Park District). As there was no one who wished to speak, the Public Hearing was closed. The following Res. # 2009-110/Ord. # 2009-9 (Amend Chapter 84 - MHD-II - Mobile Home Park District) was introduced by reference, offered by Council Vice President LaRocca and seconded by Councilwoman Tragni. Discussion followed, during which Ronald Gordon, Esq. explained the ordinance and answered Council's questions. After discussion, the resolution/ordinance was passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2009-110

BE IT RESOLVED by the Township Council of the Township of Marlboro that an Ordinance entitled:

ORDINANCE # 2009-9

AN ORDINANCE DELETING SECTION 84-47.1, "MHD-II MOBILE HOME PARK DISTRICT" OF CHAPTER 84, "LAND USE DEVELOPMENT AND

REGULATIONS", IN ITS ENTIRETY AND REPLACING SAME WITH A NEW SECTION 84-47.1, "MHD-II MOBILE HOME PARK DISTRICT"

which was introduced on February 12, 2009, public hearing tabled on March 5, 2009 to March 19, 2009, be adopted on second and final reading this 19th day of March, 2009.

BE IT FURTHER RESOLVED that notice of the adoption of this ordinance shall be advertised according to law.

The following Res. # 2009-105 - Amending Res. #2009-41 - Beacon Hill Litigation) was introduced by reference, offered by Councilwoman Tragni and seconded by Council President Rosenthal. Ronald Gordon, Esq. explained the consent order. There was a brief discussion between Council members and Ronald Gordon, Esq. After discussion, the resolution was passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2009-105 (As Amended)

A RESOLUTION AMENDING RESOLUTION #2009-41, AUTHORIZING A CONSENT ORDER FOR SETTLEMENT OF THE LITIGATION KNOWN AS THE "BEACON HILL LITIGATION"

WHEREAS, on January 22, 2009, the Township Council of the Township of Marlboro adopted Resolution #2009-41, which authorized the execution of a Consent Order for Settlement of the Litigation known as the "Beacon Hill Litigation"; and

WHEREAS, Resolution #2009-41 cited the affected lots and blocks to be re-zoned from the LC Land conservation District to the R-80 Residential District as: Block 132, Lots 32-39, 51-56, Block 153, Lots 36, 46, 57-84, 86-137, Block 153.01, Lots 1-5 and Block 153.02, Lots 1-9; and

WHEREAS, Russell R. Reeves and Kathleen C. Reeves have since withdrawn their agreement to the settlement described in the Consent Order as to their property, Block 132, Lots 50.001 and 50.02; and

WHEREAS, the correct designations of the lot and blocks to be re-zoned pursuant to the Consent Order are:

Block	Lot
153	86
153	87
153	123
153	125
153	126
153	75
153	76
153	84

all of which are collectively referred to as the "Plaintiff's Property"; and

WHEREAS, the Township Council of the Township of Marlboro desires to correct the erroneous listing of the Plaintiffs Property which is set forth in the second "whereas" and the second "resolved" clause of Resolution #2009-41; and

WHEREAS, all other portions of Resolution #2009-41 accurately reflect the terms and conditions of the Consent Order.

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED, by the Township Council of the Township of Marlboro, County of Monmouth and State of New Jersey, that Resolution #2009-41 is hereby corrected to reflect that the plaintiffs' property that is to be re-zoned pursuant to the Consent Order is as follows:

Block	Lot
153	86
153	87
153	123
153	125
153	126
153	75
153	76
153	84; and

BE IT FURTHER RESOLVED, that the remainder of Resolution #2009-41 remains unchanged and in full force and effect; and

BE IT FURTHER RESOLVED, that a certified copy of this Resolution shall be provided to each of the following:

- a. Beacon Hill Farm, LLC, Saul P. Schwartz, Arlene Schwartz, Russell R. Reeves and Kathleen C. Reeves
- b. Mayor Jonathan L. Hornik
- c. Township Administrator
- d. Township Zoning Officer
- e. DeCotiis, FitzPatrick, Cole & Wisler, LLP

The following Res. # 2009-068/Ord. # 2009-2 (Amend Chapter 84 - Rezoning LC to R-80 to Implement Consent Order - B. 153, L. 75, 76, 84, 86, 87, 123, 125, 126) was introduced by reference, offered by Councilwoman Tragni and seconded by Council Vice President LaRocca and was passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2009-68

BE IT RESOLVED by the Township Council of the Township of Marlboro that an Ordinance entitled:

ORDINANCE # 2009-2 (As Amended)

AN ORDINANCE AMENDING AND SUPPLEMENTING SECTION 84-29B ENTITLED "ZONING MAP", OF CHAPTER 84, ENTITLED "LAND USE DEVELOPMENT AND REGULATIONS" OF THE CODE OF THE TOWNSHIP OF MARLBORO, NEW JERSEY TO IMPLEMENT A CONSENT ORDER AND RE-ZONE CERTAIN LANDS FROM THE LAND CONSERVATION DISTRICT TO THE R-80 RESIDENTIAL DISTRICT

be introduced and passed on first reading and that the same be advertised according to law; and

BE IT FURTHER RESOLVED that the same be considered for final passage on April 30, 2009 at 8:00 p.m. at the Marlboro Municipal Complex, 1979 Township Drive, Marlboro, New Jersey, at which time all persons interested will be given an opportunity to be heard concerning said ordinance.

ORDINANCE # 2009-2 (As Amended)

AN ORDINANCE AMENDING AND SUPPLEMENTING SECTION 84-29B ENTITLED "ZONING MAP", OF CHAPTER 84, ENTITLED "LAND USE DEVELOPMENT AND REGULATIONS" OF THE CODE OF THE TOWNSHIP OF MARLBORO, NEW JERSEY TO IMPLEMENT A CONSENT ORDER AND RE-ZONE CERTAIN LANDS FROM THE LAND CONSERVATION DISTRICT TO THE R-80 RESIDENTIAL DISTRICT

WHEREAS, on October 25, 2006, the Mayor and Township Council of the Township of Marlboro adopted Ordinance 2006-15 re-zoning certain lots to the LC Land Conservation District; and

WHEREAS, on January 22, 2009, the Township entered into a Consent Order under Monmouth County Superior Court Docket #MON-L-4100-06 with the Plaintiffs, Beacon Hill Farm, LLC, Saul P. Schwartz, Arlene Schwartz, Russell R. Reeves and Kathleen C. Reeves, which Consent Order calls for the reinstatement of the R-80 Residential District in a certain area of the Township; and

WHEREAS, the Consent Order provides that Beacon Hill Farms, LLC, Saul P. Schwartz and Arlene Schwartz and their successors and assigns agree that certain property owned by these parties shall not be developed as a subdivision for more than 30 single-family lots and that said property shall be subject to the R-80 Zoning Standards as they exist at the time of the execution of the Consent Order; and

WHEREAS, the Consent Order provides that if and in the event that Beacon Hill Farms, LLC, Saul P. Schwartz and Arlene Schwartz shall acquire any additional land up to 8 acres, provided that the property is contiguous to the subject property that these parties, their successors and assigns shall have the right to develop up to four additional lots; and

WHEREAS, the Consent Order provides that Beacon Hill Farms, LLC, Saul P. Schwartz and Arlene Schwartz and their successors and assigns agree that the property shall not be developed during the lifetime of Saul P. Schwartz and that certain events are deemed the equivalent of death for development purposes as set forth in the Consent Order; and

WHEREAS, the Consent Order provides that Beacon Hill Farms, LLC, Saul P. Schwartz and Arlene Schwartz and their successors and assigns agree to cooperate with the Township of Marlboro in the preservation of the property owned by these parties if the Township determines to preserve said property for open space, farm preservation or recreation whereby the Township has been granted a right of first refusal and other valuable rights as set forth in the Consent Order; and

WHEREAS, the Consent Order provides that Russell R. Reeves and Kathleen C. Reeves, who are the owners of Block 132, Lots 50.01 and 50.02 shall not be subject to the restrictions set forth above, but shall have their property re-zoned to the R-80 Zoning Standards; and

WHEREAS, the Consent Order provides that nothing therein shall constitute a revocation or waiver of the existing approved subdivision previously filed by Russell R. Reeves and Kathleen C. Reeves with regard to Block 132, Lots 50.01 and 50.02; and

WHEREAS, Russell R. Reeves and Kathleen C. Reeves have since withdrawn their agreement to the settlement described in the Consent Order as to their property, Block 132, Lots 50.001 and 50.02; and

WHEREAS, in fulfillment of its obligations pursuant to the Consent Order, the Mayor and Township Council hereby determine to restore certain lots to the R-80 Residential District.

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED, by the Township Council of the Township of Marlboro, County of Monmouth and State of New Jersey that the following provisions of the Marlboro Code shall be amended and supplemented as follows:

Subsection 84-29 having been re-codified as Section 84-29B(1), shall be amended and supplemented to the effect that the zoning map adopted by said subsection shall be revised so as to delete the premises set forth hereinbelow from the LC Land Conservation District and add such premises to the R-80 Residential District:

Block	Lot
153	86
153	87
153	123
153	125
153	126
153	75
153	76
153	84

BE IT FURTHER ORDAINED, that if any such paragraph, subsection, clause or provision of this ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection or provision so adjudicated and the remainder of the ordinance shall be deemed valid and effective; and

BE IT FURTHER ORDAINED, that if any ordinance or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict; and

BE IT FURTHER ORDAINED, that this ordinance shall take effect upon passage and publication in accordance with the applicable law.

The following Res. # 2009-129/Ord. # 2009-16 (Amend Chapter 5 - Development Fees) was introduced by reference, offered by Council Vice President LaRocca and seconded by Councilwoman Marder and was passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2009-129

BE IT RESOLVED by the Township Council of the Township of Marlboro that an Ordinance entitled:

ORDINANCE # 2009-16

AN ORDINANCE AMENDING CHAPTER 5 "AFFORDABLE HOUSING", ARTICLE III, "DEVELOPMENT FEES" OF THE CODE OF THE TOWNSHIP OF MARLBORO TO PROVIDE FOR THE COLLECTION OF DEVELOPMENT FEES IN ACCORDANCE WITH THE ADOPTED HOUSING ELEMENT AND FAIR SHARE PLAN OF THE TOWNSHIP OF MARLBORO

be introduced and passed on first reading and that the same be advertised according to law; and

BE IT FURTHER RESOLVED that the same be considered for final passage on April 2, 2009 at 8:00 p.m. at the Marlboro Municipal Complex, 1979 Township Drive, Marlboro, New Jersey, at which time all persons interested will be given an opportunity to be heard concerning said ordinance.

ORDINANCE # 2009-16

AN ORDINANCE AMENDING CHAPTER 5 "AFFORDABLE HOUSING", ARTICLE III, "DEVELOPMENT FEES" OF THE CODE OF THE TOWNSHIP OF MARLBORO TO PROVIDE FOR THE COLLECTION OF DEVELOPMENT FEES IN ACCORDANCE WITH THE ADOPTED HOUSING ELEMENT AND FAIR SHARE PLAN OF THE TOWNSHIP OF MARLBORO

WHEREAS, by Ordinance No. 2006-24 (the "Ordinance"), the Township of Marlboro updated Chapter 5 "Affordable Housing", Article III "Development Fees" to provide for the collection of development fees in accordance with the comments received from Council on Affordable Housing ("COAH") in COAH's resolution dated July 18, 2006; and

WHEREAS, the New Jersey Legislature enacted laws impacting upon the imposition of development fees effective July 17, 2008 and found at P.L. 2008, C. 46; and

WHEREAS, N.J.S.A. 52:27D-329.2 and the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq., authorized COAH to adopt and promulgate regulations for the collection, maintenance, and expenditure of development fees, pursuant to law; and

WHEREAS, the Township Council now desires to adopt standards for the collection, maintenance and expenditure of development fees pursuant to COAH's regulations, N.J.S.A. 52:27D-329.2 and the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq.; and

WHEREAS, this Ordinance, which amends the Development Fee Ordinance of the Township was forwarded in draft form to COAH on December 30, 2008 as part of the Township's petition for third round substantive certification; and

WHEREAS, this Ordinance was approved by COAH by resolution dated February 25, 2009.

NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED by the Township of Marlboro, County of Monmouth, State of New Jersey that Article III, "Development Fees" of Chapter 5, "Affordable Housing", of the Code of the Township of Marlboro is hereby deleted in its entirety and replaced with a new Article III, "Development Fees" created and established as follows:

CHAPTER 5 AFFORDABLE HOUSING
ARTICLE III DEVELOPMENT FEES

Section 5-26 Purpose & Requirements

- a) In Holmdel Builder's Association 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 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- b) Pursuant TO N.J.S.A. 52:27D-329.2 and the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent

jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.

- c) This Ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance with N.J.S.A. 52:27D-329.2 and the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This Ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.
- d) This Ordinance shall not be effective until approved by COAH pursuant to *N.J.A.C. 5:96-5.1*.
- e) The Township of Marlboro shall not spend development fees until COAH has approved a plan for spending such fees in conformance with *N.J.A.C. 5:97-8.10* and *N.J.A.C. 5:96-5.3*.

Section 5-27 Definitions

- a) The following terms, as used in this Ordinance, shall have the following meanings:

"Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

"COAH" or the "Council" means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.

"Development fee" means money paid by a developer for the improvement of property as permitted in *N.J.A.C. 5:97-8.3*.

"Developer" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

"Equalized assessed value" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).

"Green building strategies" means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

Section 5-28 Residential Development Fees, Eligible exactions, ineligible exactions and exemptions for certain residential developments

a) Imposed Residential Development Fees

(i) Within the Stream Corridor Preservation Residential Zone ("SCPR"), a density bonus is permitted for the cluster development option provided for in this zone. Residential developers within this zone shall pay a development fee of 6% of the equalized assessed value for each additional unit permitted as a result of the density bonus under the cluster development option. On the remaining units, the developer shall pay a development fee of 1.50% of equalized assessed value. Under the cluster development option in the SCPR Zone District, a maximum density of 0.8 lot per gross acre is permitted as a density bonus. In non-cluster developments, the maximum density in the SCPR Zone district is 0.43 lot per gross acre. (The density bonus equals a net of 0.37 lot per gross acre.) If a variance is granted permitting development in the SCPR Zone District pursuant to N.J.S.A. 40:55D-70d(5) (referred to as a "d" variance or density variance), then the developer shall be subject to a bonus development fee of 6% of the equalized assessed value per unit on each additional residential unit realized above that which is permitted by right under the existing zoning. On the remaining units, the developer shall be subject to a development fee of 1.50% of the equalized assessed value per unit. However, if the zoning on a site has changed during the two-year period preceding the filing of the "d" variance application, then the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two years preceding the filing of the "d" variance application.

(ii) Within the R-60/15 Residential District, a density bonus is permitted for the cluster development option provided for in this residential district. Residential developers within this residential district shall pay a development fee of 6% of the equalized assessed value for each additional unit permitted as a result of the density bonus under the cluster development option. On the remaining units, the developer shall pay a development fee of 1.50% of the equalized assessed value. Under the cluster development option in R-60/15 Residential District, a maximum density of one lot per gross acre is permitted as a density bonus. In non-cluster developments, the maximum density in this residential district is 0.58 lot per gross acre. (The density bonus equals a net of 0.42 lot per gross acre.) If a variance is granted permitting development in the R-60/15 Zone District pursuant to N.J.S.A. 40:55D-70d(5) (referred to as a "d" variance or density variance), then the developer shall be subject to a bonus development fee of 6% of the equalized assessed value per unit on each additional residential unit realized above that which is permitted by right under the existing zoning. On the remaining units, the developer shall be subject to a development fee of 1.50% of the equalized assessed value per unit. However, if the zoning on a site has changed during the two-year period preceding the filing of the "d" variance application, then the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two years preceding the filing of the "d" variance application.

(iii) For residential developments in the R-40/30 Residential District which are located on properties that are not included within the consent order identified in § 84-40.1C of the Code of the Township of Marlboro, New Jersey, residential developers shall pay a development fee in the amount of 6% of the equalized assessed value for each additional unit permitted as a result of rezoning from the R-80 Residential District. On the remaining units, the developer shall pay a development fee of 1.50% of the equalized assessed value. Under the R-40/30 Residential District, a maximum density of 0.87 unit per acre is permitted. Under the previous R-80 Residential District, a maximum density of 0.43 unit per acre is permitted. If variance is granted permitting development in the R-40/30 Zone District pursuant to N.J.S.A. 40:55D-70d(5) (referred to as a "d" variance or density variance), then the developer shall be subject to a bonus development fee of 6%

of the equalized assessed value per unit on each additional residential unit realized above that which is permitted by right under the existing zoning. On the remaining units, the developer shall be subject to a development fee of 1.50% of the equalized assessed value per unit. However, if the zoning on a site has changed during the two-year period preceding the filing of the "d" variance application, then the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two years preceding the filing of the "d" variance application.

(iv) Within all other residential districts of the Township, developers shall pay a development fee in the amount of 6% of the equalized assessed value for each additional unit which is realized beyond that which would have been permitted utilizing the density provisions that were in effect in the district in which the property was located as of the effective date of this section (as set forth in Schedule A which appears at the end of this Chapter). This provision shall apply to all additional units realized from whatever source (i.e., from density bonus provisions under the cluster development option, from a rezoning which approved subsequent to the effective date of this section, from a variance which is granted subsequent to the effective date of this section, etc.). On the remaining units, the developer shall pay a development fee of 1.50% of the equalized assessed value. If a variance is granted permitting development in any residential district of the Township pursuant to N.J.S.A. 40:55D-70d(5) (referred to as a "d" variance or density variance), then the developer shall be subject to a bonus development fee of 6% of the equalized assessed value per unit on each additional residential unit realized above that which is permitted by right under the existing zoning. On the remaining units, the developer shall be subject to a development fee of 1.50% of the equalized assessed value per unit. However, if the zoning on a site has changed during the two-year period preceding the filing of the "d" variance application, then the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two years preceding the filing of the "d" variance application.

- b) Eligible exactions, ineligible exactions and exemptions for residential development

- i. Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
- ii. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
- iii. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- iv. Residential structures demolished and replaced as a result of a natural disaster shall be exempt from paying a development fee.

Section 5-28.1 Non-residential Development Fees, Eligible exactions, ineligible exactions and exemptions for non-residential development

- a) Imposed Non-residential Development Fees
 - i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted by the Non-residential Development Fee Act (N.J.S.A. 40:55D-8.1 et seq.), shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
 - ii. Non-residential developers, except for developers of the types of development specifically exempted by the Non-residential Development Fee Act (N.J.S.A. 40:55D-8.1 et seq.), shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed

value resulting from any additions to existing structures to be used for non-residential purposes.

iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

b) Eligible exactions, ineligible exactions and exemptions for non-residential development

i. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.

ii. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.

iii. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-residential Development Fee Act, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.

iv. A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide non-residential Development Fee Act, shall be subject to the non-residential development fee at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.

- v. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Township of Marlboro as a lien against the real property of the owner.

Section 5-29 Collection Procedures for Residential and Non-residential Development Fees; Appeals

- a) Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the Construction Official.
- b) For non-residential developments only, the Developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The Developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- c) The Construction Official shall notify the local Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.
- d) Within 90 days of receipt of that notice, the Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- e) The Construction Official shall notify the Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.

- f) Within 10 business days of a request for the scheduling of a final inspection, the Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the Developer of the amount of the fee.
- g) Should the Township of Marlboro fail to determine or notify the Developer of the amount of the development fee within 10 business days of the request for final inspection, the Developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in N.J.S.A. 40:55D-8.6(b).
- h) Fifty percent of the development fee shall be collected 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.
- i) Appeal of development fees
 - 1) A Developer may challenge residential development fees imposed by filing a challenge with the Monmouth County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by the Township of Marlboro. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
 - 2) A Developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation, New Jersey Department of the Treasury. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Township of Marlboro. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax

Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

Section 5-30 Affordable Housing Trust Fund

- a) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Chief Financial Officer of Marlboro Township for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- b) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 1. payments in lieu of on-site construction of affordable units;
 2. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multi-story attached development accessible;
 3. rental income from municipally operated units;
 4. repayments from affordable housing program loans;
 5. recapture funds;
 6. proceeds from the sale of affordable units; and
 7. Any other funds collected in connection with Township of Marlboro's affordable housing program.
- c) Within seven days from the opening of the trust fund account, the Township of Marlboro shall provide COAH with written authorization, in the form of a three-party escrow agreement between Marlboro Township, the bank holding the interest-bearing housing trust fund, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
- d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

Section 5-31 Use of Affordable Housing Trust Funds

- a) The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to

address the Township of Marlboro's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.

- b) Funds shall not be expended to reimburse the Township of Marlboro for past housing activities.
- c) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the Marlboro Township Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
 - i. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
 - ii. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the Marlboro Township Fair Share Plan to make them affordable to households earning 30 percent or less of median income.

- iii. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- d) The Township of Marlboro may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
- e) No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 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's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

Section 5-32 Monitoring

- a) The Township of Marlboro shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Township of Marlboro's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

Section 5-33 Ongoing Collection of Fees

- a) The ability for the Township of Marlboro to impose, collect and expend development fees shall expire with its substantive certification unless the Township of Marlboro has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If the Township of Marlboro fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to N.J.S.A. 52:27D-320. The Township of Marlboro shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall the Township of Marlboro retroactively impose a development fee on such a development. The Township of Marlboro shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

BE IT FURTHER ORDAINED, that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provisions so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective.

BE IT FURTHER ORDAINED, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon passage and publication in accordance with applicable law.

The following Res. # 2009-130 (Person to Person Transfer T & C Restaurant Inc. To S & A Route 79, Inc. (Crown Palace)) was introduced by reference, offered by Council Vice President LaRocca seconded by Council President Rosenthal and was passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2009-130

A RESOLUTION OF THE TOWNSHIP OF MARLBORO AUTHORIZING PERSON-TO-PERSON TRANSFER OF a PLENARY RETAIL CONSUMPTION LICENSE NUMBER 1328-33-005-006 ISSUED TO T&C RESTAURANT, INC. T/A CROWN PALACE RESTAURANT TO S&A ROUTE 79, INC. T/A CROWN PALACE RESTAURANT

WHEREAS, application was made to the Township of Marlboro ("Township") by S&A Route 79, Inc. T/A Crown Palace Restaurant t/a Crown Palace Restaurant ("Applicant") for a person-to-person transfer of a Plenary Retail Consumption License Number 1328-33-005-006 ("License") presently held by T&C Restaurant, Inc. t/a Crown Palace Restaurant; and

WHEREAS, the Applicant has disclosed and the appropriate Township officials have reviewed the source of all funds used in connection with the purchase of said license, which information is contained in the report of the Police Department concerning this transfer application; and

1. The submitted application form is complete in all respects;
2. The applicant is qualified to be licensed according to all standards established by the New Jersey Alcoholic Beverage Control Act, the regulations promulgated thereunder, as well as any pertinent local ordinances or Division-approved conditions; and
3. The Applicant has disclosed and the Township has reviewed the source of all funds used in the purchase of the license and the licensed business and all additional financing obtained in connection with the licensed business; and

WHEREAS, the Township has received correspondence dated March 11, 2009, wherein the State of New Jersey Department of Law and Public Safety, Division of Alcoholic Beverage Control ("Division") advised that it has amicably resolves charges pending against T&C Restaurant, Inc. and that the Division, ". . . withdraws its objection to a transfer of the license and Marlboro Township may now act upon the transfer."; and

WHEREAS, the Township Council of the Township of Marlboro has reviewed the application and all supporting documentation finds it appropriate to approve the transfer of the aforesaid plenary retail consumption license.

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of Marlboro that the application by S&A Route 79, Inc. t/a Crown Palace Restaurant for a person to person transfer of a Plenary Retail Consumption License Number 1328-33-005-006 presently held by T&C Restaurant, Inc. t/a Crown Palace Restaurant be and is hereby is approved; and

BE IT FURTHER RESOLVED that the license transferred herewith shall be subject to suspension or revocation for a violation of any of the aforesaid conditions pursuant to N.J.S.A. 33:1-32; and

BE IT FURTHER RESOLVED, that a certified copy of this Resolution shall be provided to each of the following:

- a. S&A Route 79, Inc. t/a Crown Palace Restaurant, 8
North Main Street, Marlboro, New Jersey 07746
- b. T&C Restaurant, Inc., t/a Crown Palace Restaurant, 8
North Main Street, Marlboro, New Jersey 07746
- c. Mayor Jonathan L. Hornik
- d. Township Administrator
- e. Township Building Department
- f. Township Chief Financial Officer
- g. DeCotiis, FitzPatrick, Cole & Wisler, LLP

The following Res. # 2009-131 (Bond Release Goldstar Site Plan) was introduced by reference, offered by Council Vice President LaRocca seconded by Councilwoman Marder and was passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2009-131

RESOLUTION AUTHORIZING RELEASE OF PERFORMANCE GUARANTEES
FOR GOLD STAR RECYCLING, INC. SITE PLAN, BLOCK 178,
LOTS 297-298, ALSO KNOWN AS 133 AMBOY ROAD, MARLBORO, NEW JERSEY

WHEREAS, in accordance with N.J.S.A. 40:55D-53, the Township of Marlboro has received a request for the release of Township held Performance Guarantees for site improvements at the Gold Star Recycling Site, Block 178, Lots 297 - 298, also known as 133 Amboy Road, New Jersey, posted by Gold Star Paving, Inc. (the "Developer"); and

WHEREAS, the Mayor and Township Council of the Township of Marlboro have received and reviewed a report from the Township Engineer dated March 12, 2009 regarding the Gold Star Recycling Site Plan, a copy of which is attached hereto and made a part hereof; and

WHEREAS, the report recommends that the current Performance Guarantees, bond and cash being held by the Township be released in their entirety, conditioned upon the payment of all fees as required by the Developer Agreement and the posting of a maintenance guarantee in the amount of \$4,545.00; and

WHEREAS, the Township Council now wishes to take the following action regarding the aforesaid cash Performance Guarantee.

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED, by the Township Council of the Township of Marlboro, County of Monmouth, State of New Jersey, that the above-described Performance Guarantees, bond and cash, posted by Developer for site improvements at the Gold Star Recycling Site, Block 178, Lots 297 - 298, also known as 133 Amboy Road, Marlboro, New Jersey, shall be released in their entirety, conditioned upon the payment of all fees as required by the Developer Agreement and the posting of a maintenance guarantee in the amount of \$4,545.00; and

BE IT FURTHER RESOLVED, that a certified copy of this Resolution shall be provided to each of the following:

- a. Gold Star Paving, Inc.
- b. Mayor Jonathan L. Hornik
- c. Township Business Administrator
- d. Township Engineer
- e. Chief Financial Officer
- f. DeCotiis, FitzPatrick, Cole & Wisler, LLP

The following Res. # 2009-132 (Authorizing Claim Against Performance Bonds - Yorkshire Estates) was introduced by reference, offered by Council Vice President LaRocca seconded by Council President Rosenthal and was passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2009-132

RESOLUTION AUTHORIZING A CLAIM AGAINST THE PERFORMANCE GUARANTEES FOR SITE IMPROVEMENTS AT THE DEVELOPMENT KNOWN AS YORKSHIRE ESTATES/COUNTRY VIEW AT THE PROPERTY FORMERLY KNOWN AS BLOCK 360, LOT 1, MARLBORO, NEW JERSEY

WHEREAS, Middlesex Development Group of Marlboro, Inc. (the "Developer") is the successor in interest to John H. Luhrs and Warren R. Luhrs, who received Final Major Subdivision and Site Plan Approval from the Planning Board of the Township of Marlboro by Resolution adopted March 15, 1995 (the "Resolution") to undertake a subdivision and construct site improvements at the site known as "Yorkshire Estates/Country View" and located at the property

formerly known as Block 360, Lot 1, Marlboro, New Jersey (the "Development"); and

WHEREAS, Developer entered into a Developer's Agreement with the Township of Marlboro on September 9, 1996 as part of the performance guarantees under which Developer was to construct the site improvements at the Development; and

WHEREAS, pursuant to the requirements of the Resolution and Developer Agreement, the Developer posted performance guarantees in the form of a Bond, No. S03510 issued by First Indemnity of America Co., in the amount of \$835,203.00, and cash, in the amount of \$92,800.00 being held in escrow by the Township, (collectively, the "Performance Guarantees") which bond and cash amount were subsequently reduced to the respective amounts of \$467,347.00 and \$51,927.00, by Resolution No. 1998-297 of the Township of Marlboro, adopted November 12, 1998; and

WHEREAS, Developer has failed to complete the required site improvements at the Development and has ignored the correspondence of the Township Engineer regarding deficiencies in the Development's improvements as set forth in the Township Engineer's letter attached hereto; and

WHEREAS, Developer is in default of the terms of the Developer Agreement by failing to complete the site improvements as promised therein and required by the Developer Agreement and conditions of the Resolution; and

WHEREAS, the Mayor and Township Council of the Township of Marlboro desire to make a claim against the Developer and the Performance Guarantees in order to effectuate the completion of the site improvements.

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED, by the Township Council of the Township of Marlboro, County of Monmouth, State of New Jersey, that it hereby authorizes the Township to make a claim against the Developer and the Performance Guarantees (as described and defined hereinabove), for the purpose of completing site improvements required by the Resolution (as defined hereinabove) at the Development known as Yorkshire Estates/Country View due to Developer's default of the terms of the Developer Agreement, Performance Guarantees and the Resolution, as described and defined hereinabove; and

BE IT FURTHER RESOLVED, that the Township Attorney is hereby authorized to take any and all appropriate legal action in order to

effectuate such claim against the Developer and the Performance Guarantees in order to complete the site improvements at the Development; and

BE IT FURTHER RESOLVED, that the Township Engineer is hereby authorized to undertake any inspections and promulgate any deficiency lists required in order to effectuate the claim against the Developer and the Performance Guarantees; and

BE IT FURTHER RESOLVED, that a certified copy of this Resolution shall be provided to each of the following:

- a. Middlesex Development Group of Marlboro, Inc.
- b. First Indemnity of America Co.
- c. Mayor Jonathan L. Hornik
- d. Township Business Administrator
- e. Township Engineer
- f. Chief Financial Officer
- g. DeCotiis, FitzPatrick, Cole & Wisler, LLP

The following Res. # 2009-133 (Award of Bid - Curb Side Bulk & Collection Disposal) was introduced by reference, offered by Councilwoman Tragni seconded by Councilwoman Marder and was passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2009-133

A RESOLUTION AUTHORIZING THE AWARD OF A CONTRACT FOR THE
PROVISION OF SPRING CLEAN UP/RESIDENTIAL BULK WASTE
PICK-UP AND DISPOSAL SERVICES

WHEREAS, the Township of Marlboro authorized the receipt of bids for the provision of Spring Clean Up/Residential Bulk Waste Pick-Up and Disposal Services (the "Bulk Waste Pick Up Services") and on March 10, 2009 received four (4) bids therefor; and

WHEREAS, the four (4) bids received were as follows:

Company	Bid Total
1. Future Sanitation, Inc.	\$703,500.00
2. Waste Management of New Jersey, Inc.	\$759,900.00
3. Freehold Cartage, Inc.	\$760,500.00

4. M&S Waste Services, Inc.

\$814,200.00

WHEREAS, the apparent lowest bidder, Future Sanitation, Inc., failed to provide the Annual Report to the New Jersey Department of Environmental Protection, that is required pursuant to Question # 13 of the Questionnaire in the bid specification documents, such prerequisite being a mandatory requirement of the bid specification documents; and

WHEREAS, the Marlboro Township Department of Public Works has recommended that the bid provided from Future Sanitation, Inc. be rejected as non-responsive because said bidder failed to provide the required Annual Report to be filed with the New Jersey Department of Environmental Protection, such prerequisite being a mandatory requirement of the bid specification documents; and

WHEREAS, the next-lowest bidder, Waste Management of New Jersey, Inc., was responsive to all bid specification document requirements, including the Annual Report to the New Jersey Department of Environmental Protection; and

WHEREAS, the Department of Public Works has recommended that the Contract for Bulk Waste Pick Up Services be awarded to the second lowest bidder, Waste Management of New Jersey, Inc., for the bid price amount of \$759,900.00; and

WHEREAS, the Chief Financial Officer has certified that sufficient funds shall be made available for the Contract for Spring Clean Up/Residential Bulk Waste Pick-Up and Disposal Services in the 2009 Municipal Budget year; and

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED, by the Township Council of the Township of Marlboro, that the bid for Spring Clean Up/Residential Bulk Waste Pick-Up and Disposal Services be and is hereby awarded to Waste Management of New Jersey, Inc. for the bid price amount of \$759,900.00; and

BE IT FURTHER RESOLVED, that the bid of Future Sanitation, Inc. is hereby rejected as non-responsive because said bidder failed to provide the Annual Report to the New Jersey Department of Environmental Protection, required pursuant to Question # 13 of the Questionnaire in the bid specifications documents, such prerequisite being a mandatory requirement of the bid specification documents; and

BE IT FURTHER RESOLVED, that the Chief Financial Officer has certified that sufficient funds in the amount of \$759,900.00 will be

made available for aforesaid Contract from the following Account:
09-01-117-288 (\$156,630.94) and 09-01-170-286 (\$92,369.06); and

BE IT FURTHER RESOLVED, that a certified copy of this
Resolution shall be provided to each of the following:

- a. Waste Management of New Jersey, Inc.
- b. Mayor Jonathan L. Hornik
- c. Township Administrator
- d. Township Director, Dept. of Public Works
- e. Township Chief Financial Officer
- f. DeCotiis, FitzPatrick, Cole & Wisler, LLP

The following Res. # 2009-134 (Amend Professional Services Contract
- Heyer/Gruel Redevelopment Study/Entron) was introduced by
reference, Councilman Cantor, seconded by Councilwoman Marder and
was passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2009-134

A RESOLUTION AUTHORIZING AN AMENDMENT TO THE PROFESSIONAL
SERVICES CONTRACT BETWEEN HEYER, GRUEL & ASSOCIATES AND
THE TOWNSHIP OF MARLBORO FOR PLANNING SERVICES IN
CONNECTION WITH A REDEVELOPMENT STUDY AND PLAN REGARDING
LANDS REFERRED TO AS THE "ENTRON PROPERTY", BLOCK 132, Lot
18, MARLBORO, NEW JERSEY TOWNSHIP

WHEREAS, the Township of Marlboro is in need of professional
planning services in connection with a proposed Redevelopment Study
to determine if the property referred to as the "Entron Property",
Block 132, lot 18, Marlboro Township, New Jersey, is an "Area in
Need of Redevelopment," pursuant to the New Jersey Local
Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. and to
undertake a Redevelopment Plan, if the "Entron Property" is in fact
deemed to be "An Area in Need of Redevelopment" (the "Professional
Services"); and

WHEREAS, the Township has requested proposals through a non-
fair and open process pursuant to the provisions of N.J.S.A. 19:44A-
20.4 et seq.; and

WHEREAS, the Township of Marlboro and Heyer, Gruel & Associates
have previously entered into a Professional Services Contract,
awarded under a non-fair and open process and seeks to amend such
Contract to expand the scope of services to include the above
described and defined Professional Services for an hourly rate of

\$135.00 per hour, as per the existing Professional Services Contract, with the total fee for the additional Professional Services as described herein not to exceed \$38,000.00; and

WHEREAS, the value of the Contract will exceed \$17,500.00 in the aggregate; and

WHEREAS, funds will be available for this purpose in the 2009 Municipal Budget; and

WHEREAS, the Township Council has deemed it necessary and in the best interest of the municipality to hire Heyer, Gruel & Associates to provide the required Professional Services described and defined hereinabove; and

WHEREAS, the services to be provided are considered to be "Professional Services" pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.; and

WHEREAS, the Local Public Contracts Law authorizes the awarding of a contract for "Professional Services" without public advertising for bids and bidding therefor, provided that the Resolution authorizing the contract and the contract itself be available for public inspection in the office of the Municipal Clerk and that notice of the awarding of the contract be published in a newspaper of general circulation in the municipality; and

WHEREAS, Heyer, Gruel & Associates has previously completed and submitted a Business Entity Disclosure Certificate certifying that Heyer, Gruel & Associates has not made any reportable contributions that would bar the award of a contract pursuant to Marlboro Township Code Section 26 or N.J.S.A. 19:44A-20.5, and that no reportable contributions that would violate the law will be made during the term of the Professional Services Contract.

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED, by the Township Council of the Township of Marlboro, that the Mayor is hereby authorized to execute a Professional Services Contract Amendment, in a form legally acceptable to the Township Attorney, between Heyer, Gruel & Associates and the Township of Marlboro to provide the above described and defined Professional Services, pursuant to a non-fair and open process; and

BE IT FURTHER RESOLVED, that this Professional Services Contract Amendment is awarded without competitive bidding pursuant to N.J.S.A. 40A:11-5(1)(a)(i) and shall provide for compensation at an hourly rate of \$135.00 per hour, with the total fee for the

additional Professional Services as described herein not to exceed \$38,000.00; and

BE IT FURTHER RESOLVED, that the Chief Financial Officer has executed a Certification of Funds for the Professional Services Contract Amendment, which is attached hereto, and that sufficient funds are available for said contract from Account Number T-18-56-858-028; and

BE IT FURTHER RESOLVED, that a copy of the Professional Services Contract Amendment and this Resolution shall be made available for public inspection in the Township Clerk's Office; and

BE IT FURTHER RESOLVED, notice of award of this Professional Services Contract Amendment shall be published pursuant to law, and a certified copy of this Resolution shall be provided to each of the following:

- a. Heyer, Gruel & Associates
- b. Township Administrator
- c. Township Chief Financial Officer
- d. DeCotiis, FitzPatrick, Cole & Wisler, LLP

The following Res. # 2009-135 (Change Meeting Date - April 23 to April 30, 2009) was introduced by reference, offered by Councilman Cantor seconded by Councilwoman Marder and was passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2009-135

BE IT RESOLVED by the Township Council of the Township of Marlboro that the regularly scheduled Council Meeting of April 23, 2009 be changed to April 30, 2009 at the usual time and place, 8 PM, Town Hall, 1979 Township Drive, Marlboro, New Jersey.

The following Res. # 2009-136 (Authorizing 2009 Mosquito Spraying Program) was introduced by reference, offered by Councilman Cantor seconded by Councilwoman Marder and was passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2009-136

BE IT RESOLVED by the Township Council of the Township of Marlboro, County of Monmouth, State of New Jersey, that

it does hereby authorize the Monmouth County Mosquito Extermination Commission to apply pesticides from aircraft to control mosquitoes over portions of the Township of Marlboro.

We understand that all pesticides used are approved for aerial application by the State and Federal governments.

It is further understood that the areas being treated are only those found to have a significantly high mosquito population and may present either a public health nuisance or disease factor.

This approval is subject to the Monmouth County Mosquito Extermination Commission notifying the local police department prior to each and every application.

As the consent agenda, the following Resolutions were introduced by reference, offered by Council Vice President LaRocca, seconded by Councilwoman Marder and passed on a roll call vote of 5 - 0 in favor: Res. #2009-137 (Redemption Tax Sale Certs. - Various), Res. #2009-138 (Refunds for Overpayments - Various), Res. #2009-139 (Refunds to WMUA - Various), Res. #2009-140 (Refunds First Quarter Taxes - Various) and Res. #2009-141 (Tax Sale Charges).

RESOLUTION # 2009-137

WHEREAS, the rightful owners of several properties have redeemed tax sale certificates totaling \$59,682.08 as per Schedule "A",

WHEREAS, the holders of the above-mentioned tax sale certificates are entitled to the amount of the sale plus interest and costs,

NOW, THEREFORE, BE IT RESOLVED by the Council of the Township of Marlboro that the amount of \$59,682.08 be refunded to the certificate holders as per Schedule "A",

SCHEDULE "A"

<u>LIEN NO</u>	<u>BLOCK/LOT</u>	<u>LIEN HOLDER</u>	<u>AMOUNT</u>
07-22	305/61	Plymouth Park Tax Services	\$48,728.94
44 Vista Drive		P.O. Box 2288 Morristown, NJ 07962-2288	

08-21	288/29 C0455	Edison Tax Services, LLC	10,953.14
455 Bayberry Court		1350 Liberty Avenue	
		Hillside, NJ 07205	
TOTAL:			<u>\$59,682.08</u>

RESOLUTION # 2009-138

WHEREAS, the attached list in the amount of \$5,699.38 known as Schedule "A", is comprised of amounts representing overpayments for 2009 taxes,

NOW, THEREFORE, BE IT RESOLVED by the Council of the Township of Marlboro to refund the above-mentioned overpaid amounts as per the attached Schedule "A",

		<u>SCHEDULE "A"</u>	
<u>BLOCK</u>	<u>LOT</u>	<u>ASSESSED OWNER</u>	<u>AMOUNT</u>
155	20.06	Michael Lee & Denise Swartz	\$ 25.35
611 Seminole Drive		611 Seminole Drive	
		Morganville, NJ 07751	
178	2 C0447	Vincent & Maria Russo	871.49
447 Hancock Place		447 Hancock Place	
		Morganville, NJ 07751	
193.02	47	Lee G. & Jill M. Lipton	196.47
103 Briarcliff Dr.		103 Briarcliff Dr.	
		Morganville, NJ 07751	
339	125	First American Real Estate	2,505.92
3 Trotter Place		Tax Service	
		Attn: Tax Refunds	
		1 First American Way	
		Mail Code: DFW 1-3	
		Westlake, TX 76262	
		Re: Fernanda Grasso	
		(Assessed Owner)	
350	16	John V. & Marlene A. Tona	1,748.90
1 Eaton Court		1 Eaton Court	
		Marlboro, NJ 07746	
420	5	Anthony James & Pauline French	351.25
22 Moore Road		22 Moore Road	
		Marlboro, NJ 07746	

TOTAL: \$ 5,699.38

RESOLUTION # 2009-139

WHEREAS, current sewer charges totaling \$549.57 have been paid by the lienholder of the Tax Sale certificates as per Schedule "A",

NOW, THEREFORE, BE IT RESOLVED by the Council of the Township of Marlboro that the above-mentioned sewer charges in the amount of \$549.57 be refunded to the Western Monmouth Utilities Authority.

SCHEDULE "A"

<u>CERT#</u>	<u>BLOCK/LOT</u>	<u>LIENHOLDER</u>	<u>AMOUNT</u>
TSC#08-2 13 Wicker Place	107/7	NASDOM, Inc.	\$113.88
TSC#08-13 8 Vassar Place	173/7 C0008	Plymouth Park Tax Services	114.20
TSC#08-14 1059 Roseberry Court	176/7 C1059	Fidelity Tax, LLC	114.05
TSC#08-32 7 Molly Pitcher Road	392/28.04	Plymouth Park Tax Services	110.79
TSC#08-57 212 Tracy Drive	305/93	NASDOM, Inc.	96.65
TOTAL:			<u>\$ 549.57</u>

RESOLUTION # 2009-140

WHEREAS, the attached list, known as Schedule "A", is comprised of amounts representing payment for 2009 first quarter taxes based upon the preliminary bills, and,

WHEREAS, these Blocks and Lots no longer appear on the current tax rolls,

NOW, THEREFORE, BE IT RESOLVED by the Council of the Township of Marlboro to refund the above-mentioned overpaid amount which totals \$4,125.99 to the respective taxpayers.

SCHEDULE "A"

<u>BLOCK</u>	<u>LOT</u>	<u>ASSESSED OWNER</u>	<u>AMOUNT</u>
172	54 QFARM	Edward & Carolyn J. Kobis	\$ 25.23
	224 Tennent Road	224 Tennent Road, Box 352 Morganville, NJ 07751	
180	88 QFARM	Thomas & Rita Athanasiou	25.23
	136 Crine Road	136 Crine Road Morganville, NJ 07751	
213	9	SFC Enterprises, Inc.	2,796.35
	483 Route 520	808 State Highway 36 2nd Floor Union Beach, NJ 07735 Re: 483 Rte 520 Assoc., LLC	
214	28.02 QFARM	Angelo & Patricia Schiraldo	12.59
	Boundary Road	22 Boundary Road Marlboro, NJ 07746	
215	4.01	R.H. Ern & Sons	1,266.59
	Vanderburg Road	52 Route 34 Matawan, NJ 07747	
TOTAL:			<u>\$4,125.99</u>

RESOLUTION # 2009-141

WHEREAS, the Township of Marlboro will hold a Tax Sale on April 23rd, 2009; and,

WHEREAS, in accordance with N.J.S.A. 54:5 et seq, the Township of Marlboro is entitled to recover costs in connection with the tax sale including, but not limited to, advertising costs which may be estimated; and,

WHEREAS, the Township wishes to assess the cost of processing and administering all phases of the Tax Sale process against only the taxpayers who are delinquent and are thereby causing the incurrence of said expenses.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Township of Marlboro that, Shirley Giaquinto, Tax Collector, be and hereby is authorized and directed to charge and collect a fee of 2% per line item of the amounts

to be sold at Tax Sale, minimum \$15.00, maximum \$100.00.

The following Res. #2009-143 (Amendment to Contract - CME - Preliminary Assessment - Block 157, L. 34.02 (88 Conover Road) was introduced by reference, offered by Councilwoman Marder and seconded by Council President Rosenthal and was passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2009-143

A RESOLUTION AUTHORIZING AN AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT BETWEEN CME ASSOCIATES AND THE TOWNSHIP OF MARLBORO FOR ENGINEERING SERVICES RELATED TO THE PRELIMINARY ASSESSMENT OF 88 CONOVER ROAD, BLOCK 157, LOT 34.01 IN MARLBORO TOWNSHIP

WHEREAS, the Township of Marlboro is in need of professional engineering services related to the preliminary assessment of 88 Conover Road, Block 157, Lot 34.01 in Marlboro, Township, New Jersey; and

WHEREAS, the Township has requested proposals through a non-fair and open process pursuant to the provisions of N.J.S.A. 19:44A-20.4 et seq.; and

WHEREAS, the Township of Marlboro and CME Associates have previously entered into a Professional Services Contract, awarded under a non-fair and open process and seeks to amend such Contract to expand the scope of services to include the above described engineering services for a fee not to exceed \$6,500.00 for the detailed scope of such additional services as further described and set forth in CME's written proposal dated January 20, 2009 (the "Proposal"), such Proposal being attached hereto and made a part hereof; and

WHEREAS, the value of the contract will exceed \$17,500.00 in the aggregate; and

WHEREAS, funds will be available for this purpose in the 2009 Municipal Budget; and

WHEREAS, the Township Council has deemed it necessary and in the best interest of the municipality to hire CME Associates to provide the required additional professional services in accordance with the Proposal; and

WHEREAS, the services to be provided are considered to be "Professional Services" pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.; and

WHEREAS, the Local Public Contracts Law authorizes the awarding of a contract for "Professional Services" without public advertising for bids and bidding therefore, provided that the Resolution authorizing the contract and the contract itself be available for public inspection in the office of the Municipal Clerk and that notice of the awarding of the contract be published in a newspaper of general circulation in the municipality; and

WHEREAS, CME has previously completed and submitted a Business Entity Disclosure Certificate certifying that CME Associates has not made any reportable contributions that would bar the award of a contract pursuant to Marlboro Township Code Section 26 or N.J.S.A. 19:44A-20.5, and that no reportable contributions that would violate the law will be made during the term of the contract.

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED, by the Township Council of the Township of Marlboro that the Mayor is hereby authorized to execute an Amendment to the Professional Services Contract, in a form legally acceptable to the Township Attorney, between CME Associates and the Township of Marlboro to provide the above described additional professional services in accordance with the Proposal (as defined hereinabove), pursuant to a non-fair and open process; and

BE IT FURTHER RESOLVED, that this Amendment to the Professional Services Contract is awarded without competitive bidding pursuant to N.J.S.A. 40A:11-5(1)(a)(i) and shall provide for compensation in an amount not to exceed \$6,500.00 for such additional professional services described in the Proposal; and

BE IT FURTHER RESOLVED, that the Chief Financial Officer has executed a Certification of Funds for the contract, which is attached hereto, and that sufficient funds are available for said Amendment to the Professional Services Contract from Open Space Trust Account Number T-15-56-859-815; and

BE IT FURTHER RESOLVED, that a copy of the Amendment to the Professional Services Contract and this Resolution shall be available for public inspection in the office of the Municipal Clerk; and

BE IT FURTHER RESOLVED, notice of award of this Amendment to the Professional Services Contract shall be published pursuant to

law, and a certified copy of this Resolution shall be provided to each of the following:

- a. CME Associates
1460 Route 9 South
Howell, NJ 07731
- b. Township Administrator
- c. Township Chief Financial Officer
- d. DeCotiis, FitzPatrick, Cole & Wisler, LLP

The following Res. #2009-144 (Additional Depository - Provident Bank) was introduced by reference, offered by Councilman Cantor and seconded by Council Vice President LaRocca and was passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2009-144

DESIGNATING ADDITIONAL DEPOSITORY

WHEREAS, under the provisions of state regulations (N.J.S.A. 40A:5-1) entitled Local Fiscal Affairs Law, the Township of Marlboro in accordance with N.J.S.A.40A:5-14 hereby establishes Legal Depositories for public monies for the calendar year 2009. Further, recent amendment to N.J.S.A. 40A:5-15.1 entitled "Securities which may be purchased by local units" provide added flexibility to secure high yield investments while safe guarding Municipal assets.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF MARLBORO, COUNTY OF MONMOUTH, STATE OF NEW JERSEY, as follows:

The following banking institution approved by the Department of Banking and Insurance under the Government Unit Depository Protection Act (GUDPA) or other authorized investment vehicle authorized by the State of New Jersey is hereby designated as an additional official depository of Township funds:

PROVIDENT BANK

The following Res. #2009-145 (Budget Transfer) was introduced by reference, offered by Council Vice President LaRocca and seconded by Councilwoman Marder and was passed on a roll call vote of 5 - 0 in favor.

RESOLUTION # 2009-145 (As Amended)

RESOLUTION AUTHORIZING TRANSFER OF APPROPRIATION
RESERVES DURING FIRST THREE MONTHS OF THE FISCAL YEAR

WHEREAS, N.J.S.A. 40A: 4-58 provides for appropriation reserve transfers during the first three (3) months of the following fiscal year, when it has been determined that additional funds may be necessary to pay for services or goods that had been received in the operations of the preceding year.

NOW, THEREFORE BE IT RESOLVED, by the Township Council of the Township of Marlboro does hereby authorize the transfers among the Appropriation Reserves (Calendar Year 2008 Municipal Budget) as follow:

From:

Police S&W	2,000.00
Tax Assessor S&W	10,000.00

To:

Clerks Office S&W	2,000.00
Engineering OE	10,000.00

Total	12,000.00	12,000.00
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At 10:00PM, Councilman Cantor moved that the meeting go into executive session for reason of discussing litigation and personnel. This was seconded by Council Vice President LaRocca, and as there was no objection, the Clerk was asked to cast one ballot. Recess was called and the executive session reconvened at 10:20PM.

RESOLUTION # 2009-142

WHEREAS, it is determined by the governing body of the Township of Marlboro that it is necessary on the 19th day of March, 2009 to go into executive session for the purpose of discussing those items that are particularly exempted from the Open Public Meetings Act, namely litigation and personnel.

