

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

Wednesday, October 14, 2009 – 7:30 p.m.

CALL TO ORDER

The Regular Meeting of the Mayor and Council of the Borough of Madison was held on the 14th day of October 2009. Mayor Holden called the meeting to order at 7:30 p.m. in the Mayor's Office, Room #210 of Bayley-Ellard High School, 205 Madison Avenue, in the Borough of Madison.

STATEMENT IN COMPLIANCE WITH THE OPEN PUBLIC MEETINGS ACT

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

"In compliance with the Open Public Meetings Act, adequate notice of this meeting of the Council was provided by transmitting a copy of the meeting notice to the Madison Eagle and Morris County Daily Record, posting a copy on the bulletin board at the main entrance of Bayley-Ellard High School, and filing a copy in the office of the Clerk, all on January 6, 2009. This Notice was made available to members of the general public."

ROLL CALL

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

Mayor Mary-Anna Holden

Council Members:

Astri J. Baillie
John M. Elias
Robert H. Conley
Jeannie Tsukamoto
Vincent A. Esposito
Carmela Vitale

Also Present:

Raymond M. Codey, Borough Administrator
Elizabeth Osborne, Acting Borough Clerk
Joseph Mezzacca, Jr., Borough Attorney

AGENDA REVIEW

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

READING OF CLOSED SESSION RESOLUTION

Mrs. Tsukamoto moved:

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

EXECUTIVE SESSION MINUTES (1)
Executive Session Minutes of September 28, 2009

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

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CONTRACT MATTERS (4)
LIGHTING SERVICES
POMEROY ROAD RECONSTRUCTION
BROOKLAKE ROAD RECONSTRUCTION
DIOCESE OF PATERSON

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

PERSONNEL MATTERS (1)
PERSONNEL MANUAL

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

LITIGATION MATTERS (4)
PROPERTY DAMAGE SETTLEMENTS
147 PARK AVENUE
COUGAR FIELD
RIPARIAN BUFFER ZONE

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

Seconded: Ms. Baillie
Vote: Approved by voice vote

RECONVENE IN COUNCIL CHAMBER

Mayor Holden reconvened the Regular Meeting at 8:15 p.m. in the 3rd Floor Meeting Room of Bayley-Ellard with all members present. The Pledge of Allegiance was recited by all.

APPROVAL OF MINUTES

Ms. Baillie moved approval of the **Executive Minutes of September 28, 2009**. Mrs. Tsukamoto seconded the motion, which passed by roll call vote.

Ms. Baillie moved approval of the **Regular Meeting Minutes of September 28, 2009**. Mrs. Tsukamoto seconded the motion, which passed by roll call vote.

GREETINGS TO PUBLIC

Mayor Holden made the following comments:

Mayor Holden noted her attendance at the Morris County Open Space Trust Fund Committee meeting this evening, along with Councilwoman Astri Baillie, Borough Administrator Ray Codey, Main Street Executive Director Jim Burnet and Open Space Committee Member Chris Kellogg, to make a presentation concerning the grant application for funds to purchase the Bayley-Ellard fields. Mayor Holden thanked Jim Burnet for the PowerPoint presentation.

Employee of the Month for October is Marlene Dolan for the job she has done assuming leadership in addressing the recent swine flu crisis by her participation on behalf of the Health Department in the county-wide development of communicable disease surveillance and school closure protocols. Her correspondence with other public officials regarding the medical aspect of the department's response to this crisis was professional and comprehensive.

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Mayor Holden also noted a meeting between Borough of Madison representatives and senior officials at Pfizer to discuss Pfizer's merger with Wyeth and to promote Madison as a good economic choice for their organization. Pfizer intends to have a leadership center here, which is very good news for Madison.

REPORTS OF COMMITTEES

Public Safety

Ms. Baillie, Chair of the Committee, no report.

Utilities

Mr. Elias, Chair of the Committee, no report.

Public Works and Engineering

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

Mr. Conley reported on several engineering projects, including the South Street reconstruction and the award of the Pomeroy Road reconstruction for consideration on tonight's agenda. Mr. Conley stated that a hearing is scheduled for October 28th regarding the Woodland Road reconstruction. The school signal replacement project is nearly 50% completed, as well as the Green Avenue water main project. The Hartley Dodge Memorial renovation is at the 18% complete mark. Dodge Field improvements are under way, as well as the Train Station landscaping project. Mr. Conley noted that residents can dispose of their leaves in three ways: by placing them at the curb in containers, bringing them to the Municipal garage beginning November 2nd or raking them to the curb for collection, which will begin November 2nd and continue through early December, weather permitting.

Finance and Borough Clerk

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

Mrs. Tsukamoto noted that the 2010 budget work has started, with 2010 being another financially challenging year. Surplus is reduced, and interest income is anticipated to be much lower. Mrs. Tsukamoto also noted that Mr. Codey is working with Department Heads, as well as labor unions, in reducing expenditures. Also, as per Mr. Kalafut, on October 15th, the Borough will make the first principal payment on the \$26 million bond sold in 2008.

Community Affairs

Dr. Esposito, Chair of the Committee, made the following comments:

Dr. Esposito noted that Bottle Hill Day, held October 3rd, was once again successful, and thanked all those who volunteered, as well as the DDC members. Dr. Esposito also thanked the Madison PBA and FMBA for the fireworks display held at the Madison High School. Dr. Esposito reminded residents that on October 22nd, the Autumn Harvest Festival will be held at the Plaza Shopping Center from 2 - 7 p.m. and will include the Farmers' Market. On Sunday, October 18th, from 8 a.m. until noon, the Madison Elks Club will hold a pancake breakfast to support the Madison Junior Football League.

Health & Public Assistance

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

COMMUNICATIONS AND PETITIONS - None

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INVITATION FOR DISCUSSION (1 of 2)

Mayor Holden opened the meeting to the public for their opportunity to ask questions and make comments on those items listed on the Agenda only. The Mayor asked that, upon recognition by the Chair, the person shall proceed to the lectern and give his/her name and address in an audible tone of voice, and print the same on the sheet provided for the record. **He/she shall limit his/her statement to three (3) minutes or less.**

Jack Kranefuss, Longview Avenue, expressed support for an ordinance to regulate multiple family housing inspections and raised concern for a residence on Longview Avenue that appears to have multiple residents. Mr. Kranefuss noted several unfamiliar automobiles parked overnight and loud noise in the early morning hours. Mayor Holden encouraged residents to contact the Police Department regarding noise and parking complaints.

Ed Meehan, Knollwood Avenue, spoke regarding neighbors on Longview Avenue, noting that he must sleep with the windows closed due to frequent loud noise.

Ken Capuder, Longview Avenue, noted that he would not like to see public funds spent to correct behavior. Mr. Capuder feels noise and parking issues are a public nuisance rather than a zone use issue. Mr. Capuder noted that summertime is not usually a problem as college students generally occupy the house during the school year.

Ellen Kranefuss, Longview Avenue, asked if zoning officials can use information collected by neighbors to investigate code violations. Mrs. Kranefuss was encouraged to contact the police while an incident of noise or illegal parking occurs.

Barbara Capuder, Longview Avenue, expressed concern that student housing in residential neighborhoods becomes the trend and asked if a certificate of occupancy has been issued. Borough Engineer Robert Vogel asked Mrs. Capuder to contact his office.

AGENDA DISCUSSIONS

Moved from the Executive Session Agenda

10/14/2009-9 AWARDING CONTRACT TO CIFELLI & SON GENERAL CONSTRUCTION, INC. OF NUTLEY NJ FOR PROJECT ENTITLED POMEROY ROAD RECONSTRUCTION

There was consensus to list on the Consent Agenda a resolution awarding the contract to Cifelli & Son as recommended by Borough Engineer Robert Vogel and Administrator Ray Codey.

Resolution R 257-2009 Listed on Consent Agenda

10/14/2009-1 ACCEPT DONATION OF NEW ROOF FOR THE LUCY D FIELD HOUSE FROM WHITEY VITALE

Mr. Codey explained the necessity to accept the donation of roofing materials and labor by resolution. The Council gladly agreed to accept the donation for the Lucy D field house roof from Whitey Vitale.

Resolution R 258-2009 Listed on Consent Agenda

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10/14/2009-2 REVISE RESIDENT COMMUTER PARKING PERMIT REFUNDS

Following discussion, there was consensus to ask for changes to the request for revisions to the resident commuter parking permit regulations.

Resolution R 254-2009 removed from Consent Agenda and the # retired

10/14/2009-3 MULTIPLE-FAMILY HOUSING INSPECTIONS

This item was removed from the agenda discussion.

10/14/2009-4

4(1) BOND ORDINANCE AMENDING BOND ORDINANCE 60-2008

4(2) BOND ORDINANCE AMENDING BOND ORDINANCE 61-2008

4(3) BOND ORDINANCE AMENDING BOND ORDINANCE 73-2008

Chief Financial Officer Robert Kalafut explained the need to properly reflect financing by issuing the proposed amendments to bond ordinances. Amendments to Ordinances 60-2008 and 61-2008 will reduce the bonds outstanding. Bond Ordinance 73-2008 for the acquisition of the Madison Recreation Center was adopted before the final award of grant funds, which will reduce the bond to \$4.7million.

Ordinance 47-2009 Listed for Introduction

Ordinance 48-2009 Listed for Introduction

Ordinance 49-2009 Listed for Introduction

10/14/2009-5

5(1) ORDINANCE AMENDING CHAPTER 203, REGULATION FISH AND ANIMAL FEEDING

5(2) ORDINANCE REGULATING FERTILIZER APPLICATION AND USE

5(3) ORDINANCE AMENDING CHAPTER 195-37.4, ESTABLISHING AND REGULATING PROPERTIES IN THE RIPARIAN ZONE

Mr. Vogel explained that the ordinances scheduled for introduction are part of the State of New Jersey mandated wastewater management plan. Mr. Mezzacca noted minor revisions to Ordinance 53-2009 that will be corrected before the public hearing scheduled for November 9, 2009.

Ordinance 51-2009 Listed for Introduction

Ordinance 52-2009 Listed for Introduction

Ordinance 53-2009 Listed for Introduction

10/14/2009-6 CBD ORDINANCE REVISIONS

Mayor Holden noted that the ordinance scheduled for introduction at this meeting addresses sign and parking regulations in the Central Business District and not design guidelines still in development with the Planning Board. Following discussion, there was agreement to introduce the CBD ordinance revisions.

Ordinance 54-2009 Listed for Introduction

10/14/2009-7 CHAPTER 159 BUDGET AMENDMENT - INSERTION OF AN ITEM OF REVENUE IN THE BUDGET OF THE YEAR 2009

Mr. Kalafut noted the insertion of unappropriated revenue in the 2009 budget for a State Health Services Grant from the New Jersey Department of Health to expand programs for the A-H1N1 influenza virus.

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Resolution R 259-2009 Listed on Consent Agenda

10/14/2009-8 AWARD BID FOR KINGS-PROSPECT SIGNAL REPLACEMENT TO KEVCO ELECTRIC, INC. OF BLOOMFIELD, NJ IN THE AMOUNT OF \$226,315.75

After a brief explanation by Mr. Vogel, there was consensus to list Resolution R 261-2009 on the Consent Agenda as recommended.

Resolution R 261-2009 Listed on Consent Agenda

ADVERTISED HEARINGS - None

INTRODUCTION OF ORDINANCES

The Acting Clerk made the following statement:

Ordinances scheduled for introduction and first reading tonight will have a hearing during the meeting of November 9, 2009, in the 3rd Floor Meeting Room of Bayley-Ellard High School, 205 Madison Avenue off Danforth Road in the Borough of Madison at 8 p.m., or as soon thereafter as practical, for further consideration and final adoption. Said ordinances will be published in the Madison Eagle, be posted at the main entrance to Bayley-Ellard High School and be made available to members of the public requesting same, as required by law.

Mayor Holden called up Ordinances for first reading and asked the Acting Clerk to read said ordinance by title:

ORDINANCE 47-2009

BOND ORDINANCE TO AMEND IN ITS ENTIRETY THE BOND ORDINANCE (ORD. NO. 51-2007) ENTITLED: "BOND ORDINANCE TO AUTHORIZE THE 2007 ROAD RECONSTRUCTION PROGRAM IN, BY AND FOR THE BOROUGH OF MADISON, IN THE COUNTY OF MORRIS, NEW JERSEY, TO APPROPRIATE THE SUM OF \$1,142,000 TO PAY THE COST THEREOF, TO MAKE A DOWN PAYMENT, TO APPROPRIATE STATE AND FEDERAL GRANTS, TO AUTHORIZE THE ISSUANCE OF BONDS TO FINANCE SUCH APPROPRIATION AND TO PROVIDE FOR THE ISSUANCE OF BOND ANTICIPATION NOTES IN ANTICIPATION OF THE ISSUANCE OF SUCH BONDS," ADOPTED ON AUGUST 27, 2007, AS PREVIOUSLY AMENDED BY ORDINANCE NO. 60-2008 ADOPTED ON SEPTEMBER 22, 2008.

Mrs. Tsukamoto made the following motion and moved approval. Ms. Baillie seconded the motion, which passed with the following roll call vote recorded:

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

Nays: None

"BOND ORDINANCE TO AMEND IN ITS ENTIRETY THE BOND ORDINANCE (ORD. NO. 51-2007) ENTITLED: 'BOND ORDINANCE TO AUTHORIZE THE 2007 ROAD RECONSTRUCTION PROGRAM IN, BY AND FOR THE BOROUGH OF MADISON, IN THE COUNTY OF MORRIS, NEW JERSEY, TO APPROPRIATE THE SUM OF \$1,142,000 TO PAY THE COST THEREOF, TO MAKE A DOWN PAYMENT, TO APPROPRIATE STATE AND FEDERAL GRANTS, TO AUTHORIZE THE ISSUANCE OF

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BONDS TO FINANCE SUCH APPROPRIATION AND TO PROVIDE FOR THE ISSUANCE OF BOND ANTICIPATION NOTES IN ANTICIPATION OF THE ISSUANCE OF SUCH BONDS,' ADOPTED ON AUGUST 27, 2007, AS PREVIOUSLY AMENDED BY ORDINANCE NO. 60-2008 ADOPTED ON SEPTEMBER 22, 2008."

heretofore introduced, does now pass on first reading, and that said ordinance be further considered for final passage at a meeting to be held on the 9th day of November, 2009, at 8:00 P.M., or as soon thereafter as the matter can be reached, at the meeting place of the Borough Council in the Temporary Municipal Offices, Bayley Ellard High School, 205 Madison Avenue, and that the Acting Borough Clerk is hereby authorized and directed to publish said ordinance according to law with a notice of its introduction and passage on first reading and of the time and place when and where said ordinance will be further considered for final passage.

ORDINANCE 48-2009

BOND ORDINANCE TO AMEND IN ITS ENTIRETY THE BOND ORDINANCE (ORD. NO. 47-2008) ENTITLED: "BOND ORDINANCE TO AUTHORIZE THE 2008 ROAD RECONSTRUCTION PROGRAM IN, BY AND FOR THE BOROUGH OF MADISON, IN THE COUNTY OF MORRIS, NEW JERSEY, TO APPROPRIATE THE SUM OF \$895,000 TO PAY THE COST THEREOF, TO MAKE A DOWN PAYMENT, TO AUTHORIZE THE ISSUANCE OF BONDS TO FINANCE SUCH APPROPRIATION AND TO PROVIDE FOR THE ISSUANCE OF BOND ANTICIPATION NOTES IN ANTICIPATION OF THE ISSUANCE OF SUCH BONDS," ADOPTED ON JULY 14, 2008, AS PREVIOUSLY AMENDED BY ORDINANCE NO. 61-2008 ADOPTED ON SEPTEMBER 22, 2008.

Mrs. Tsukamoto made the following motion and moved approval. Ms. Baillie seconded the motion, which passed with the following roll call vote recorded:

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

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"BOND ORDINANCE TO AMEND IN ITS ENTIRETY THE BOND ORDINANCE (ORD. NO. 47-2008) ENTITLED: 'BOND ORDINANCE TO AUTHORIZE THE 2008 ROAD RECONSTRUCTION PROGRAM IN, BY AND FOR THE BOROUGH OF MADISON, IN THE COUNTY OF MORRIS, NEW JERSEY, TO APPROPRIATE THE SUM OF \$895,000 TO PAY THE COST THEREOF, TO MAKE A DOWN PAYMENT, TO AUTHORIZE THE ISSUANCE OF BONDS TO FINANCE SUCH APPROPRIATION AND TO PROVIDE FOR THE ISSUANCE OF BOND ANTICIPATION NOTES IN ANTICIPATION OF THE ISSUANCE OF SUCH BONDS,' ADOPTED ON JULY 14, 2008, AS PREVIOUSLY AMENDED BY ORDINANCE NO. 61-2008 ADOPTED ON SEPTEMBER 22, 2008."

heretofore introduced, does now pass on first reading, and that said ordinance be further considered for final passage at a meeting to be held on the 9th day of November, 2009, at 8:00 P.M., or as soon thereafter as the matter can be reached, at the meeting place of the Borough Council in the Temporary Municipal Offices, Bayley Ellard High School, 205 Madison Avenue, and that at such time and place all persons interested be given an opportunity to be heard concerning said ordinance, and that the Acting Borough Clerk is hereby authorized and directed to publish said ordinance according to law with a notice of its introduction and passage on first reading and of the time and place when and where said ordinance will be further considered for final passage.

ORDINANCE 49-2009

BOND ORDINANCE TO AMEND IN ITS ENTIRETY THE BOND ORDINANCE (ORD. NO. 73-2008) ENTITLED: "BOND ORDINANCE TO AUTHORIZE THE ACQUISITION OF REAL PROPERTY FOR OPEN SPACE PRESERVATION AND RECREATION PURPOSES BY AND FOR THE BOROUGH OF MADISON, IN THE COUNTY OF MORRIS, NEW JERSEY, TO APPROPRIATE THE SUM OF \$12,800,000 TO PAY THE COST THEREOF, TO MAKE A DOWN PAYMENT, TO APPROPRIATE A COUNTY GRANT, TO AUTHORIZE THE ISSUANCE OF BONDS TO FINANCE SUCH APPROPRIATION AND TO PROVIDE FOR THE

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ISSUANCE OF BOND ANTICIPATION NOTES IN ANTICIPATION OF THE ISSUANCE OF SUCH BONDS," ADOPTED ON NOVEMBER 24, 2008.

Mrs. Tsukamoto made the following motion and moved approval. Ms. Baillie seconded the motion, which passed with the following roll call vote recorded:

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

"BOND ORDINANCE TO AMEND IN ITS ENTIRETY THE BOND ORDINANCE (ORD. NO. 73-2008) ENTITLED: 'BOND ORDINANCE TO AUTHORIZE THE ACQUISITION OF REAL PROPERTY FOR OPEN SPACE PRESERVATION AND RECREATION PURPOSES BY AND FOR THE BOROUGH OF MADISON, IN THE COUNTY OF MORRIS, NEW JERSEY, TO APPROPRIATE THE SUM OF \$12,800,000 TO PAY THE COST THEREOF, TO MAKE A DOWN PAYMENT, TO APPROPRIATE A COUNTY GRANT, TO AUTHORIZE THE ISSUANCE OF BONDS TO FINANCE SUCH APPROPRIATION AND TO PROVIDE FOR THE ISSUANCE OF BOND ANTICIPATION NOTES IN ANTICIPATION OF THE ISSUANCE OF SUCH BONDS,' ADOPTED ON NOVEMBER 24, 2008."

heretofore introduced, does now pass on first reading, and that said ordinance be further considered for final passage at a meeting to be held on the 9th day of November, 2009, at 8:00 P.M., or as soon thereafter as the matter can be reached, at the meeting place of the Borough Council in the Temporary Municipal Offices, Bayley Ellard High School, 205 Madison Avenue, and that at such time and place all persons interested be given an opportunity to be heard concerning said ordinance, and that the Acting Borough Clerk is hereby authorized and directed to publish said ordinance according to law with a notice of its introduction and passage on first reading and of the time and place when and where said ordinance will be further considered for final passage.

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Ordinance 50-2009 was removed from the Agenda and the # retired.

ORDINANCE 51-2009

ORDINANCE OF THE BOROUGH OF MADISON AMENDING THE BOROUGH CODE TO INCLUDE NEW CHAPTER 192 ENTITLED “WILD ANIMALS”

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

SECTION 1: The Borough Code of the Borough of Madison shall be amended by the inclusion of new Chapter 192 to be entitled “Wild Animals” and which shall read in its entirety as follows:

**CHAPTER 192
WILD ANIMALS**

Sections:

192-1 Purpose.

192-2 Definitions.

192-3 Feeding of Fish, Wild Animals and Waterfowl Prohibited.

192-4 Feeding of Other Songbirds and Other Backyard Birds Permitted.

192-5 Enforcement.

192-6 Penalties.

192-7 Severability.

§192-1 Purpose:

It has been well established that the feeding of fish, wild animals and waterfowl is both detrimental to fish, animals, and waterfowl and causes a public health nuisance and safety hazard that is detrimental to the health and general welfare of the public. Such activities also cause degradation of water quality and/or are detrimental to the natural environment.

§192-2 Definitions:

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

“Body of water” shall include any stream, pond, lake, river or any and all accumulation of water.

“Wild animal” shall include any animal, which is not normally domesticated in this state, including but not limited to bears, coyotes, deer, feral cats, foxes, groundhogs, opossums, raccoons, skunks, and waterfowl.

“Waterfowl” Any bird that frequents the water, or lives about rivers, lakes, etc., or on or near the sea; an aquatic fowl, including but not limited to ducks, geese, swans, heron, and egrets.

§192-3 Feeding of Fish, Wild Animals and Waterfowl Prohibited:

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- A. No person shall purposely or knowingly, as said terms are defined in Title 2C of the New Jersey Revised Statutes, feed, bait, or in any manner provide access to food to any fish, wild animal, or waterfowl in the Borough of Madison, on lands either publicly or privately owned. This section shall not apply to the feeding of farm animals.
- B. No person shall purposely, knowingly, or otherwise feed, bait, or otherwise provide access to food to any fish or cause to place in any body of water any object or material of any nature or kind, except that this shall not in any way be deemed to prohibit a person or persons possessing a valid fishing license from engaging in normal fishing activities, where permitted by law.
- C. No person shall purposely or knowingly leave or store any refuse, garbage, food product, pet food, forage product or supplement, salt, seed or birdseed, fruit, grain in a manner that would constitute an attractant to any wild animal or waterfowl.
- D. No person shall fail to take remedial action to avoid contact or conflict with wild animals, which may include the securing or removal of outdoor trash, cooking grills, pet food, bird feeders or any other similar food source or attractant after being advised by the Borough to undertake such remedial action. Further, after an initial contact or conflict with a wild animal, no person shall continue to provide, or otherwise fail to secure or remove, any likely food sources or attractants, including, but not limited to, outdoor trash, grills, pet food or bird feeders.
- E. Nothing in this section shall apply to (1) any agent of the Borough authorized to implement an alternative control method set forth in any approved community based deer management plan and possessing a special deer management permit issued by the New Jersey Division of Fish and Wildlife in accordance with the provisions of P.L. 2000, c.46, or (2) any hunter engaging in baiting for the purpose of hunting pursuant to a valid hunting license issued in accordance with the provisions of Title 23 of the New Jersey Revised Statutes.

§192-4 Feeding of Other Songbirds and Other Backyard Birds Permitted

Feeding of other songbirds and other backyard birds shall be permitted outdoors at such times and in such numbers that: (1) Such feeding does not create an unreasonable disturbance that affects the rights of surrounding property owners and renders other persons insecure in the use of their property and; (2) Does not create an accumulation of droppings on the property and surrounding properties and; (3) Does not become an attractant for rodents or other wild animals and; (4) Bird feeders are placed at least five (5) feet above the ground.

§192-5 Enforcement

- A. Each property owner shall have the duty to remove any above named materials or device placed on the owner's property in violation of this Ordinance.

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- B. Failure to remove such materials or device or to make such modifications within twenty-four (24) hours after notice from the municipality shall constitute a separate violation of this Ordinance.
- C. Health Department personnel, Animal Control Officers and all Police Officers of the municipality are hereby given full power and authority to enforce this ordinance.
- D. No person shall hinder, molest or interfere with anyone authorized or empowered to perform any duty under this ordinance.

§192-6 Penalties

Any person violating any provision of this Chapter shall be liable to a fine not less than Fifty Dollars (\$50.00) or more than Five Hundred Dollars (\$500.00) for each offense, together with the costs of prosecution. A separate offense shall be deemed committed on each day or part of each day during which a violation occurs or continues.

§192-7 Severability

Every section of this chapter or subdivision or separate part thereof shall be considered a separate provision to the intent that if any portion shall be declared unconstitutional it shall not affect the remaining parts of this chapter.

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

Ms. Baillie moved that Ordinance 51-2009, which the Acting Borough Clerk read by title, be adopted. Dr. Esposito seconded the motion. There was no Council discussion, and the motion passed with the following roll call vote recorded:

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

ORDINANCE 52-2009

ORDINANCE OF THE BOROUGH OF MADISON REGULATING FERTILIZER APPLICATION AND USE

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

SECTION 1: The Borough Code of the Borough of Madison shall be amended by the inclusion of new Chapter 97 to be entitled “Fertilizer Application and Use” and which shall read in its entirety as follows:

**CHAPTER 97
FERTILIZER APPLICATION AND USE**

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Sections:

- 97-1 Purpose.**
- 97-2 Basis and Background.**
- 97-3 Definitions.**
- 97-4 Prohibited Conduct.**
- 97-5 Phosphorus Fertilizer Application.**
- 97-6 Enforcement.**
- 97-7 Violations and Penalties.**
- 97-8 Severability.**

§97-1 Purpose:

To regulate the outdoor application of fertilizer so as to reduce the overall amount of excess nutrients entering waterways, thereby helping to protect and improve surface water quality and also to prevent degradation of the environment. This chapter does not apply to fertilizer application on commercial farms.

§97-2 Basis and Background:

Elevated levels of nutrients, particularly phosphorus, in surface waterbodies can result in excessive and accelerated growth of algae and aquatic plants (eutrophication). Excessive plant growth can result in diurnal variations and extremes in dissolved oxygen and pH, which, in turn, can be detrimental to aquatic life. As algae and plant materials die off, the decay process creates a further demand on dissolved oxygen levels. The presence of excessive plant matter can also restrict use of the affected water for recreation and water supply.

Fertilizer applied immediately prior to a runoff-producing rainfall, outside the growing season or to impervious surfaces is most likely to be carried away by means of runoff without accomplishing the desired objective of supporting target vegetation growth. Therefore, the management of the type, amount and techniques for fertilizer application is necessary as one tool to protect water resources.

This ordinance does not apply to application of fertilizer on commercial farms, but commercial farmers are expected to implement best management practices in accordance with conservation management plans or resource conservation plans developed for the farm by the Natural Resource Conservation Service and approved by the Soil Conservation District Board.

§97-3 Definitions:

For the purpose of this ordinance, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this Ordinance clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

Buffer - the land area, 25 feet in width, adjacent to any waterbody. However, in situations that warrant additional flexibility, such as where lot sizes are exceptionally small or where the 25 ft buffer constitutes the majority of the available property, the required buffer may be reduced to 10 feet in width,

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(with the additional requirement that a drop spreader be used for fertilizer application).

Commercial farm - a farm management unit producing agricultural or horticultural products worth \$2,500 or more annually.

Fertilizer - means a fertilizer material, mixed fertilizer or any other substance containing one or more recognized plant nutrients, which is used for its plant nutrient content, which is designed for use or claimed to have value in promoting plant growth, and which is sold, offered for sale, or intended for sale.

Impervious Surface - a surface that has been covered with a layer of material so that it is highly resistant to infiltration by water. This term shall be used to include any highway, street, sidewalk, parking lot, driveway, or other material that prevents infiltration of water into the soil.

Person - any individual, corporation, company, partnership, firm, association, or political subdivision of this State subject to municipal jurisdiction.

Phosphorus fertilizer - any fertilizer that contains phosphorus, expressed as P₂O₅, with a guaranteed analysis of greater than zero; except that it shall not be considered to include animal (including human) or vegetable manures, agricultural liming materials, or wood ashes that have not been amended to increase their nutrient content.

Soils Test - a technical analysis of soil conducted by an accredited soil-testing laboratory following the protocol for such a test established by Rutgers Cooperative Research and Extension.

Waterbody – A collection of or body of surface waters, such as a lake, river, stream, creek, pond, or any accumulation of or standing water.

§97-4 Prohibited Conduct:

No person may do or cause to occur any of the following:

- a) Apply fertilizer when a runoff producing rainfall is occurring or predicted and/or when soils are saturated and a potential for fertilizer movement off-site exists.
- b) Apply fertilizer to an impervious surface. Fertilizer inadvertently applied to an impervious surface must be swept or blown back into the target surface or returned to either its original or another appropriate container for reuse.
- c) Apply fertilizer within the buffer of any waterbody.
- d) Apply fertilizer more than 15 days prior to the start of or at any time after the end of the recognized growing season from and during March 1 to November 15.

§97-5 Phosphorus Fertilizer Application

A. No person may do the following:

1. Apply phosphorus fertilizer in outdoor areas except as demonstrated to be needed for the specific soils and target vegetation in accordance with a soils test and the associated annual fertilizer recommendation issued by Rutgers Cooperative Research and Extension.

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- B. Exceptions
1. Application of phosphorus fertilizer needed for
 - a. **establishing vegetation for the first time, such as after land disturbance, provided the application is in accordance with the requirements established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. and implementing rules,**
 - b. **establishing or repairing a turf area in accordance with good soil practices.**
 2. Application of phosphorus fertilizer that delivers liquid or granular fertilizer under the soils surface, directly to the feeder roots.
 3. Application of phosphorus fertilizer to residential container plantings, flowerbeds, or vegetable gardens.

§97-6 Enforcement:

This ordinance shall be enforced by the Borough Engineer, Police Department and/or other representatives or employees duly designated by the Borough of Madison.

§97-7 Violations and Penalties:

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

§98-8 Severability:

Each section, subsection, sentence, clause and phrase of this Chapter 97 is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this chapter to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this chapter.

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

Ms. Baillie moved that Ordinance 52-2009, which the Acting Borough Clerk read by title, be adopted. Dr. Esposito seconded the motion. There was no Council discussion, and the motion passed with the following roll call vote recorded:

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

ORDINANCE 53-2009

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

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

SECTION 1: Chapter 195, Article VI of the Borough Code of the Borough of Madison shall be amended to be entitled “Stormwater, Wetland Protection, Steep Slopes, Flood Control and Riparian Buffer Zone”.

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

§195-37.10 Riparian Buffer Zone

A. INTENT AND PURPOSE

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

1. Restore and maintain the chemical, physical, and biological integrity of the water resources of the Borough of Madison;
2. Prevent excessive nutrients, sediment, and organic matter, as well as biocides and other pollutants, from reaching surface waters by optimizing opportunities for filtration, deposition, absorption, adsorption, plant uptake, biodegradation, and denitrification, which occur when stormwater runoff is conveyed through vegetated buffers as stable, distributed sheet flow prior to reaching receiving waters;
3. Provide for shading of the aquatic environment so as to moderate temperatures, retain more dissolved oxygen, and support a healthy assemblage of aquatic flora and fauna.

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4. Provide for the availability of natural organic matter (fallen leaves and twigs) and large woody debris (fallen trees and limbs) that provide food and habitat for small bottom dwelling organisms (insects, amphibians, crustaceans, and small fish), which are essential to maintain the food chain;
5. Increase stream bank stability and maintain natural fluvial geomorphology of the stream system, thereby reducing stream bank erosion and sedimentation and protecting habitat for aquatic organisms;
6. Maintain base flows in streams and moisture in wetlands;
7. Control downstream flooding; and
8. Conserve the natural features important to land and water resources, e.g., headwater areas, groundwater recharge zones, floodways, floodplains, springs, streams, wetlands, woodlands, and prime wildlife habitats.

B. STATUTORY AUTHORITY

The municipality of the Borough of Madison is empowered to regulate land uses under the provisions of the New Jersey Municipal Land Use Law, N.J.S.A 40:55D-1 et seq., which authorizes each municipality to plan and regulate land use in order to protect public health, safety and welfare by protecting and maintaining native vegetation in riparian areas. The Borough of Madison is also empowered to adopt and implement this Ordinance under provisions provided by the following legislative authorities of the State of New Jersey:

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

C. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

D. ESTABLISHMENT OF RIPARIAN ZONES

1. Riparian Zones adjacent to all waters shall be protected from avoidable disturbance and shall be delineated as follows:
 - a. The riparian zone shall be 300 feet wide along both sides of any C2 water, and all upstream tributaries situated within the same HUC 14 watershed. The riparian zone shall equal the Special Water Resource Protection Area, and shall be measured as defined at N.J.A.C. 7:8-5.5(h). Special Water Resource Protection Areas are established along all waters designated as C2 at N.J.A.C. 7:9B and perennial or intermittent streams that drain into or upstream of the C2 waters as shown on the USGS quadrangle map or in the County Soil Surveys within the associated HUC 14 drainage.
 - b. The riparian zone shall be 150 feet wide along both sides of the following waters:
 - 1) Any trout production water and all upstream waters (including tributaries);
 - 2) Any trout maintenance water and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water;
 - 3) Any segment of a water flowing through an area that contains documented habitat for a threatened or endangered species of plant or animal, which is critically dependent on the regulated water for survival, and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water; and
 - 4) Any segment of a water flowing through an area that contains acid producing soils.
 - c. For all other waters, a riparian zone of 50 feet wide shall be maintained along both sides of the water.
2. The portion of the riparian zone that lies outside of a surface water is measured landward from the top of bank. If a discernible bank is not present along a surface water, the portion of the riparian zone outside the surface water is measured landward as follows:
 - a. Along a linear fluvial or tidal water, such as a stream or swale, the riparian zone is measured landward of the feature's centerline;
 - b. Along a non-linear fluvial water, such as a lake or pond, the riparian zone is measured landward of the normal water surface limit;
 - c. Along an amorphously-shaped feature such as a wetland complex, through which water flows but which lacks a definable channel, the riparian zone is measured landward of the feature's centerline.

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Where steep slopes (in excess of 15 percent) are located within the designated widths, the riparian zone shall be extended to include the entire distance of this sloped area to a maximum of 300 feet.

For areas adjacent to surface water bodies for which the Floodway has been delineated, the riparian zone shall cover the entire Floodway area, or the area described in Section D.1.a. or D.1.b., whichever area has the greatest extent. Floodway delineations shall be based upon the State's adopted floodway delineations. However, requests for alterations to the adopted delineations can be provided to the New Jersey Department of Environmental Protection for consideration if site specific information is available.

3. A riparian zone is an overlay to the existing zoning districts. The provisions of the underlying district shall remain in full force except where the provisions of the riparian zone differ from the provisions of the underlying district, in which case the provision that is more restrictive shall apply. These provisions apply to land disturbances resulting from or related to any activity or use requiring application for any of the following permits or approvals:
 - Building permit
 - Zoning variance
 - Special exception
 - Conditional use
 - Subdivision/land development approval
4. A map of the riparian zones of the entire municipality of the Borough of Madison, including all land and water areas within its boundaries, which designates Surface Water Bodies, is included as part of this Ordinance, and is appended as schedules herein. Maps of the municipality on which these designations have been overlain shall be on file and maintained by the offices of the Clerk of the Borough of Madison. This map conforms to all applicable laws, rules and regulations applicable to the creation, modification and promulgation of zoning maps.
5. It shall be the duty of the Engineer of the Borough of Madison, every second year after the adoption of this Ordinance or at such times as may be required by law, to propose modifications to the map delineating Riparian Zones required by any naturally occurring or permitted change in the location of a defining feature of a surface water body occurring after the initial adoption of the riparian zone map, to record all modifications to the riparian zone map required by decisions or appeals under Section K, and by changes made by the New Jersey Department of Environmental Protection in surface water classifications or Floodway delineations. Floodway delineations shall be based upon the State's adopted floodway delineations. However requests for alterations to the adopted delineations can be provided to the Department for consideration if site-specific information is available.
6. The applicant or designated representative shall be responsible for the initial determination of the presence of a riparian zone on a site, and for identifying

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the area on any plan submitted to the Borough of Madison in conjunction with an application for a construction permit, subdivision, land development, or other improvement that requires plan submissions or permits. This initial determination shall be subject to review and approval by the municipal engineer, governing body, or its appointed representative, and, where required, by the New Jersey Department of Environmental Protection.

7. **EXEMPTIONS.** Instead of the riparian zone protection requirements above, the applicant must demonstrate compliance with one of the following:
- a. The proposed project or activity is not in the riparian zone established at section D.1. above;
 - b. The proposed disturbance in a riparian zone is for a linear development with no feasible alternative route;
 - c. The proposed disturbance in a riparian zone is in accordance with a stream corridor restoration or stream bank stabilization plan or project approved by the Department of Environmental Protection;
 - d. The proposed disturbance of a riparian zone is necessary to provide for public pedestrian access or water dependent recreation that meets the requirements of the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, the Flood Hazard Area Control rules, N.J.A.C. 7:13, or the Coastal Zone Management rules, N.J.A.C. 7:7E;
 - e. The proposed disturbance of a riparian zone is required for the remediation of hazardous substances performed with New Jersey DEP or Federal EPA oversight pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq. or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.;
 - f. The proposed disturbance is for redevelopment that does not exceed the limits of existing impervious surfaces; or
 - g. The proposed disturbance would prevent extraordinary hardship on the property owner peculiar to the property; or prevent extraordinary hardship, provided the hardship was not created by the property owner, that would not permit a minimum economically viable use of the property based upon reasonable investment; and/or
 - h. In lieu of the requirements at (g)6 above, demonstrate through site plans depicting proposed development and topography that new disturbance is not located in areas with a 20 percent or greater slope, except as provided in (g)6i and ii above.

E. USES PERMITTED IN RIPARIAN ZONES

Any other riparian zone area shall remain in a natural condition or, if in a disturbed condition, including agricultural activities, at the time of adoption of this ordinance may be restored to a natural condition. There shall be no clearing or cutting of trees and brush, except for removal of dead vegetation and pruning for reasons of public safety or for the replacement of invasive species with indigenous species. There shall be no altering of watercourses, dumping of trash, soil, dirt, fill, vegetative or other debris, re-grading or construction. The

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following uses are permitted either by right or after review and approval by the municipality in riparian zones. No new construction, development, use, activity, encroachment, or structure shall take place in a riparian zone, except as specifically authorized in this Section. The following uses shall be permitted within a riparian zone:

1. Open space uses that are primarily passive in character shall be permitted by right to extend into a riparian zone, provided near stream vegetation is preserved. These uses do not require approval by the Zoning Enforcement Officer or compliance with an approved Riparian Zone Management Plan. Such uses include wildlife sanctuaries, nature preserves, forest preserves, fishing areas, game farms, fish hatcheries and fishing reserves, operated for the protection and propagation of wildlife, but excluding structures. Such uses also include passive recreation areas of public and private parklands, including unpaved hiking, bicycle and bridle trails, provided that said trail have been stabilized with pervious materials.
2. Fences, for which a permit has been issued by the Construction Code Office, to the extent required by applicable law, rule or regulation.
3. Crossings by farm vehicles and livestock, recreational trails, roads, railroads, storm water lines, sanitary sewer lines, water lines and public utility transmission lines, provided that the land disturbance is the minimum required to accomplish the permitted use, subject to approval by the Zoning Enforcement Officer, provided that any applicable State permits are acquired, and provided that any disturbance is offset by buffer improvements in compliance with an approved Riparian Zone Management Plan and that the area of the crossing is stabilized against significant erosion due to its use as a crossing.
4. Stream bank stabilization or riparian reforestation, which conform to the guidelines of an approved Riparian Zone Management Plan, or wetlands mitigation projects that have been approved by the Department of Environmental Protection, subject to approval by the Zoning Enforcement Officer and subject to compliance with an approved Riparian Zone Management Plan.

F. PERFORMANCE STANDARDS FOR RIPARIAN ZONES

For all riparian zones, the following conditions shall apply:

1. All new major and minor subdivisions and site plans shall be designed to provide sufficient areas outside of the riparian zone to accommodate primary structures, any normal accessory uses appurtenant thereto, as well as all planned lawn areas.
2. Portions of lots within the riparian zone must be permanently restricted by deed or conservation easement held by the Borough of Madison, its agent, or another public or private land conservation organization which has the ability to provide adequate protection to prevent adverse impacts within the riparian zone. A complete copy of the recorded conservation

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restriction that clearly identifies the deed book and pages where it has been recorded in the office of the Morris County Clerk must be submitted to the municipality. The applicant shall not commence with the project or activity prior to making this submittal and receiving actual approval of the plan modification and receipt of any applicable permits from the New Jersey Department of Environmental Protection. The recorded conservation restriction shall be in the form approved by the municipality and shall run with the land and be binding upon the property owner and the successors in interest in the property or in any part thereof. The conservation restriction may include language reserving the right to make de minimus changes to accommodate necessary regulatory approvals upon the written consent of the municipality, provided such changes are otherwise consistent with this chapter. The recorded conservation restriction shall, at a minimum, include:

- a. A written narrative of the authorized regulated activity, date of issuance, and date of expiration, and the conservation restriction that, in addition, includes all of the prohibitions set forth at N.J.S.A. 13:8B-2b(1) through (7);
 - b. Survey plans for the property as a whole and, where applicable, for any additional properties subject to the conservation restrictions. Such survey plans shall be submitted on the surveyor's letterhead, signed and sealed by the surveyor, and shall include metes and bounds descriptions of the property, the site, and the areas subject to the conservation restriction in New Jersey State Plane Coordinates, North American Datum 1983, and shall depict the boundaries of the site and all areas subject to the conservation restriction as marked with flags or stakes onsite. All such survey plans shall be submitted on paper and in digital CAD or GIS file on a media and format defined by the municipality. The flags or stakes shall be numbered and identified on the survey plan; and
 - c. A copy or copies of deeds for the property as a whole that indicate the deed book and pages where it has been recorded in the office of the clerk of Morris County.
3. Any lands proposed for development which include all or a portion of a riparian zone shall as a condition of any major subdivision or major site plan approval, provide for the vegetation or revegetation of any portions of the riparian zone which are not vegetated at the time of the application or which were disturbed by prior land uses, including for agricultural use. Said vegetation plan shall utilize native and non-invasive tree and plant species to the maximum extent practicable in accordance with an approved Riparian Zone Management Plan, described in Section J.
 4. For building lots which exist as of the date of adoption of this ordinance, but for which a building permit or a preliminary site plan approval has not been obtained or is no longer valid, the required minimum front, side, and rear setbacks may extend into the riparian zone, provided that a deed restriction and/or conservation easement is applied which prohibits clearing or construction in the riparian zone.

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5. All stormwater shall be discharged outside of but may flow through a riparian zone and shall comply with the Standard For Off-Site Stability in the “Standards for Soil Erosion and Sediment Control in New Jersey”, established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. (See N.J.A.C. 2:90-1.3.)
6. If stormwater discharged outside of and flowing through a riparian zone cannot comply with the Standard For Off-Site Stability cited in Section F.5, then the proposed stabilization measures must meet the requirements of the Flood Hazard Area Control Act Rule at N.J.A.C. 7:13-10.2 et. seq., and have an approved Flood Hazard permit.

G. NONCONFORMING STRUCTURES AND USES IN RIPARIAN ZONES

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

1. Legally existing but nonconforming structures or uses may be continued.
2. For all other riparian zones:
 - a. Encroachment within the riparian zone shall only be allowed where previous development or disturbance has occurred.
 - b. Existing impervious cover shall not be increased within the riparian zone as a result of encroachments where previous development or disturbances have occurred.
 - c. Discontinued nonconforming uses may be resumed any time within one year from such discontinuance but not thereafter when showing clear indications of abandonment. No change or resumption shall be permitted that is more detrimental to the riparian zone, as measured against the intent and purpose under Section A, than the existing or former nonconforming use. This one-year time frame shall not apply to agricultural uses that are following prescribed Best Management Practices for crop rotation. However, resumption of agricultural uses must be strictly confined to the extent of disturbance existing at the time of adoption of this ordinance.

H. USES PROHIBITED IN RIPARIAN ZONES

For all riparian zones, any use or activity not specifically authorized in Section E or Section G shall be prohibited within the riparian zone. By way of example, the following activities and facilities are prohibited:

1. Removal or clear-cutting of trees and other vegetation or soil disturbance such as grading, except for selective vegetation removal for the purpose of stream or riparian area stabilization or restoration projects that require vegetation removal or grading prior to implementation.
2. Storage of any hazardous or noxious materials.

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3. Use of fertilizers, pesticides, herbicides, and/or other chemicals in excess of prescribed industry standards or the recommendations of the Soil Conservation District.
4. Roads or driveways, except where permitted in compliance with Section E.
5. Motor or wheeled vehicle traffic in any area, except as permitted by this Ordinance.
6. Parking lots.
7. Any type of permanent structure, except structures needed for a use permitted by Section E.
8. New subsurface sewage disposal areas. The expansion and replacement of existing subsurface sewage disposal areas for existing uses is permitted.
9. Residential grounds or lawns, except as otherwise permitted pursuant to this Ordinance.

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

1. For all riparian zones, hardship variances may be granted by the Zoning Board of Adjustment in cases of a preexisting lot (existing at the time of adoption of this ordinance) when there is insufficient room outside the riparian zone for uses permitted by the underlying zoning and there is no other reasonable or prudent alternative to placement in the riparian zone, including obtaining variances from setback or other requirements that would allow conformance with the riparian zone requirements, and provided the following demonstrations are made:
 - a. An applicant shall be deemed to have established the existence of an extreme economic hardship, if the subject property is not capable of yielding a reasonable economic return if its present use is continued or if it is developed in accordance with provisions of this ordinance and that this inability to yield a reasonable economic return results from unique circumstances peculiar to the subject property which:
 - 1) Do not apply to or affect other property in the immediate vicinity;
 - 2) Relate to or arise out of the characteristics of the subject property because of the particular physical surroundings, shape or topographical conditions of the property involved, rather than the personal situations of the applicant; and are not the result of any action or inaction by the applicant or the owner or his predecessors in title.
 - 3) The necessity of acquiring additional land to locate development outside the riparian zone shall not be considered an economic hardship unless the applicant can demonstrate that there is no adjacent land that is reasonably available or could be obtained, utilized, expanded or

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managed in order to fulfill the basic purpose of the proposed activity.

- b. An applicant shall be deemed to have established compelling public need if the applicant demonstrates, based on specific facts that one of the following applies:
 - 1) The proposed project will serve an essential public health or safety need;
 - 2) The proposed use is required to serve an existing public health or safety need; or
 - 3) There is no alternative available to meet the established public health or safety need.
 - c. A variance can only be granted if it is shown that the activity is in conformance with all applicable local, state, and federal regulations, and that the exception granted is the minimum relief necessary to relieve the hardship.
2. If the above demonstrations are made, then the encroachment of impervious surfaces (structures or pavement) otherwise permitted by the underlying zoning is permitted to the extent of 750 square feet total. Said encroachment is not permitted closer than 100 feet from the top of the bank at bank-full flow or level of Category Two Waters for Trout Production (FW2-TP), or closer than 50 feet from the top of the bank at bank-full flow or level of other surface water bodies.
 3. If such an exception is granted, the applicant shall rehabilitate an environmentally degraded riparian zone area within or adjacent to the same site, and at least equivalent in size to the riparian zone reduction permitted, or, if not possible, rehabilitate or expand a riparian zone area at least equivalent in size within a nearby site and, if available, within the same watershed. Rehabilitation shall include reforestation, stream bank stabilization and removal of debris, in accordance with a Riparian Zone Management Plan, as described in Section J below. The Borough may require financial contribution be made to an Open Space or Municipal Stormwater Management Plan mitigation plan fund in exchange for this requirement.

J. RIPARIAN ZONE MANAGEMENT PLAN

1. Within any riparian zone, no construction, development, use, activity, or encroachment shall be permitted unless the effects of such development are accompanied by preparation, approval, and implementation of a Riparian Zone Management Plan.
2. The landowner, applicant, or developer shall submit to [municipal contact], or its appointed representative, a Riparian Zone Management Plan prepared by an environmental professional, professional engineer or other qualified professional which fully evaluates the effects of any proposed uses on the riparian zone.

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The Riparian Zone Management Plan shall identify the existing conditions including:

- a. Existing vegetation;
- b. Field delineated surface water bodies;
- c. Field delineated wetlands;
- d. The 100-year floodplain;
- e. Flood Hazard Areas, including Floodway and Flood Fringe areas, as delineated by the New Jersey Department of Environmental Protection;
- f. Soil classifications as found on Soil Surveys;
- g. Existing subdrainage areas of site with HUC-14 (Hydrologic Unit Code) designations;
- h. Slopes in each subdrainage area segmented into sections of slopes less than or equal to fifteen (15) percent; above fifteen percent but less than twenty (20) percent; and greater than twenty (20) percent.

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

3. The Plan shall be reviewed and must be approved by the Engineer of the Borough of Madison, in consultation with the Environmental Commission, as part of the subdivision and land development process.
4. The Riparian Zone Management Plan must include management provisions in narrative and/or graphic form specifying:
 - a. The manner in which the area within the riparian zone will be owned and by whom it will be managed and maintained.
 - b. The conservation and/or land management techniques and practices that will be used to conserve and protect the riparian zone, as applicable.
 - c. The professional and personnel resources that are expected to be necessary, in order to maintain and manage the riparian zone.
 - d. A revegetation plan, if applicable, that includes: three (3) layers of vegetation, including herbaceous plants that serve as ground cover, understory shrubs, and trees that when fully mature, will form an overhead canopy. Vegetation selected must be native, non-invasive species, and consistent with the soil, slope and moisture conditions of the site. The revegetation plan shall be prepared by a qualified environmental professional, landscape architect, or professional engineer, and shall be subject to the approval of the Municipal

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Engineer, in consultation with the Environmental Commission. Dominant vegetation in the Riparian Zone Management Plan shall consist of plant species that are suited to the stream buffer environment. The Engineer of the Borough of Madison may require species suitability to be verified by qualified experts from the Soil Conservation District, Natural Resources Conservation Service, New Jersey Department of Environmental Protection, US Fish and Wildlife Service and/or State or Federal forest agencies.

5. A Riparian Zone Management Plan is not required where the riparian zone is not being disturbed and conservation easements/deed restrictions are applied to ensure there will be no future clearing or disturbance of the riparian zone.
6. Performance of the Riparian Zone Management Plan shall be guaranteed for a minimum of two years, by a surety, such as a bond, cash or letter of credit, which shall be provided to the Borough of Madison prior to the Borough issuing any permits or approving any uses relating to the applicable use or activity.

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

1. When a landowner or applicant disputes the boundaries of a riparian zone, or the defined bank-full flow or level, the landowner or applicant shall submit evidence to the Borough Engineer that describes the riparian zone, presents the landowner or applicant's proposed riparian zone delineation, and presents all justification for the proposed boundary change. For Category One (C1) riparian zones, the landowner or applicant must first obtain approval from the New Jersey Department of Environmental Protection. A decision from the Department must be included with the evidence submitted for municipal review.
2. Within 45 days of a complete submission of Section K.1 above, the Engineer of the Borough of Madison, or appointed representative, shall evaluate all material submitted and shall make a written determination, a copy of which shall be submitted to the Borough Clerk and the landowner or applicant. Failure to act within the 45-day period shall not be interpreted to be an approval of the proposed boundary change.
3. Any party aggrieved by any such determination or other decision or determination under Section K.2. may appeal to the Planning Board under the provisions of this ordinance. The party contesting the location of the riparian zone boundary shall have the burden of proof in case of any such appeal.
4. Any party aggrieved by any determination or decision of the Planning Board under this Ordinance may appeal to the Mayor and Council of the Borough. The party contesting the determination or decision shall have the burden of proof in case of any such appeal.
5. Inspections:

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

Inspections will be conducted on an as-needed basis, should the Borough feel that a problem exists. All inspections will be undertaken be in accordance with local, state and federal requirements for property owner notification and permission.
6. Conflicts: All other ordinances, parts of ordinances, or other local requirements that are inconsistent or in conflict with this ordinance are hereby superseded to the extent of any inconsistency or conflict, and the provisions of this ordinance apply.
7. Severability:
- a. Interpretation: This Ordinance shall be so construed as not to conflict with any provision of New Jersey or Federal law.
 - b. Notwithstanding that any provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, all remaining provisions of the Ordinance shall continue to be of full force and effect.
 - c. The provisions of this Ordinance shall be cumulative with, and not in substitution for, all other applicable zoning, planning and land use regulations.

L. ENFORCEMENT

A prompt investigation shall be made by the appropriate personnel of the Borough of Madison, of any person or entity believed to be in violation hereof. If, upon inspection, a condition which is in violation of this Ordinance is discovered, a civil action in the Special Part of the Superior Court, or in the Superior Court, if the primary relief sought is injunctive or if penalties may exceed the jurisdictional limit of the Special Civil Part, by the filing and serving of appropriate process. Nothing in this Ordinance shall be construed to preclude the right of the Borough of Madison, pursuant to N.J.S.A 26:3A2-25, to initiate legal proceedings hereunder in Municipal Court. The violation of any section or subsection of this Ordinance shall constitute a

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separate and distinct offense independent of the violation of any other section or subsection, or of any order issued pursuant to this Ordinance. Each day a violation continues shall be considered a separate offense.

M. PENALTIES

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

Ms. Baillie moved that Ordinance 53-2009, which the Acting Borough Clerk read by title, be adopted. Dr. Esposito seconded the motion. There was no Council discussion, and the motion passed with the following roll call vote recorded:

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

ORDINANCE 54-2009

ORDINANCE OF THE BOROUGH OF MADISON AMENDING CHAPTER 195 OF THE MADISON BOROUGH CODE ENTITLED “LAND DEVELOPMENT ORDINANCE”

STATEMENT OF PURPOSE: The purpose of this ordinance is to amend the Madison Land Development Ordinance to address upper floor signage provisions for the CBD-1 Zone and signage standards for the Gateway Zone, revise the purpose statement for the CBD Zones, clarify setback provisions and buffering in the CBD Zones and reduce off-street parking requirements in the CBD Zones.

WHEREAS, the Madison Borough Planning Board has reviewed the Zoning Ordinance of the Borough of Madison and recommends that the Borough Council consider amending the Zoning Ordinance to address upper floor signage provisions for the CBD-1 Zone and signage standards for the Gateway Zone, revise the purpose statement for the CBD Zones, clarify setback provisions and buffering in the CBD Zones and reduce off-street parking requirements in the CBD Zones; and

WHEREAS, the Planning Board recommends the adoption of the amendments to the Zoning Ordinance to the Borough Council and finds that they are not inconsistent with the 2002 Master Plan and amendments thereto.

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

SECTION 1: Schedule IV of Chapter 195 of the Madison Borough Code entitled “Land Development Ordinance”, shall be amended to add the following

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language under Nonresidential Zone Specifications, Permanent Signs, Hanging Vertical Signs, in the Notes column:

“ Projecting or Hanging Vertical Signs for upper floor businesses that meet these standards shall not count toward the maximum signage square footage within the CBD-1 Zone. In addition, projecting/vertical signage for upper floor businesses shall not extend above the second story.”

SECTION 2: Schedule I of Chapter 195 of the Madison Borough Code entitled “Land Development Ordinance”, shall be amended as follows:

Notes:

.....

b. Front yard in CBD Zone: The predominant setback shall be maintained in the CBD-1 Zone but shall not exceed 12 feet. The predominant setback shall be maintained in the CBD-2 Zone but shall not exceed 20 feet.

.....

d. Rear yard in CBD Zone: One foot of rear yard for each two feet in height of principal building with a minimum rear yard of twenty-five feet.

.....

SECTION 3: Chapter 195 of the Madison Borough Code entitled “Land Development Ordinance”, Section 195-32.4 entitled “CBD-1, CBD-2 Central Business District Zones regulations” shall be amended as follows:

A. Purpose. The purpose of the CBD Zones is to promote a vital, mixed-use, downtown core designed to encourage street-level, pedestrian activity through ground level locally oriented retail uses and upper floor offices and residential uses. Preserving and maintaining a streetscape consistent with downtown design principles, encouraging the reuse and rehabilitation of historic structures, maintaining the character and scale of buildings, sites, and uses to promote pedestrian accessibility and safety, and encouraging locally oriented retail businesses and services, are central to the identity, health and vitality of the CBD.

.....

F. Off-Street Parking.

(1) Off-street parking requirements in the CBD-1 and CBD-2 Zones shall meet the non-residential parking requirements set forth in the tables provided in Parking Schedule I in Section 195-35, reduced by 20%, as well as the parking requirements for residential use as per the NJRSIS, except that on-street parking shall not be counted towards the parking requirement. In evaluation of parking requirements, the reviewing Board may consider demand management approaches, such as provision of carsharing, ridesharing and shuttles, and may further reduce the required parking by up to 10% based on documentation provided

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by an Applicant outlining proposed demand management techniques.

(2) If there is a change in building occupancy (tenancy), but not use (as defined by Section 195-20.B(2), and no physical expansion is proposed, additional parking above what is already provided (on-site, off-site, or through a shared parking agreement) is not required and no parking variance is necessary.

(3) If there is a change in building occupancy and use (but not physical expansion), then the parking requirement is computed based on the difference between the parking required for the legally existing (prior) use versus the parking required for the new (proposed) use, provided there shall be no reduction in the amount of any existing on-site or designated off-site parking.

(4) Parking requirements may be addressed in the CBD Zones through a shared parking approach between compatible uses either on or off-tract. The off-tract parking shall be located within five (5) blocks or 1,000 feet of the subject property. Documentation shall be provided to support the feasibility of shared parking, including an analysis of the uses sharing the parking and the peak usage periods for each, hours of operation of uses sharing the parking, and lot capacity (number of spaces) based on existing and proposed usage of the lot. A written contractual arrangement should be secured for a minimum two-year period, with a renewable option between parties.

G. Supplemental Requirements.

(1) Landscaped Buffers.

(a) Where a nonresidential or mixed-use development is contiguous to a residential use or zone, there shall be a landscaped buffer strip along the perimeter of the property where it is contiguous to such residential property or zone. Such buffer strip shall be at least ten (10') feet in depth measured from the residential property line and shall be used as a planting strip or developed as a planted berm, with plant material (trees, shrubs, and plants, including a combination of coniferous and deciduous varieties) a minimum of six (6') feet in height at time of planting. In addition, the reviewing body may also require a solid, board-on-board fence in conjunction with the plantings of at least five (5) feet in height.

SECTION 4: Schedule IV of Chapter 195 of the Madison Borough Code entitled "Land Development Ordinance", Part (2) Nonresidential Zone Specifications shall be amended to add new lines as follows:

A. To be added under Permanent Signs, Building:

Gateway Zone:

- Maximum Size (square feet): 1.5 for each linear foot of building width or 50 feet, whichever is less
- Maximum Height: —
- Maximum Number: —
- Minimum Setback: —
- Permit Required: Yes

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- Illumination Permitted: External Illumination Only
- Notes: Building signs also include all canopy signs for purposes of total calculation of sign area. Building signs are only permitted on building facades that front a public right-of-way.

B. To be added under Canopy:

Gateway Zone:

- Maximum Size: See building signs*
- Maximum Height: —
- Maximum Number: 1
- Minimum Setback: —
- Permit Required: Yes
- Illumination Permitted: No

C. To be added under Freestanding:

Gateway Zone:

- Maximum Size: 20 square feet
- Maximum Height: 4 feet
- Maximum Number: 1
- Minimum Setback: 10 feet to any abutting street right-of-way or property line
- Permit Required: Yes
- Illumination Permitted: Low-intensity, external illumination only

SECTION 5: All other provisions of the Ordinance not inconsistent herewith shall remain the same.

SECTION 6: This Ordinance shall take effect as provided by law.

Ms. Baillie moved that Ordinance 54-2009, which the Acting Borough Clerk read by title, be adopted. Dr. Esposito seconded the motion. There was no Council discussion, and the motion passed with the following roll call vote recorded:

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

CONSENT AGENDA RESOLUTIONS

The Acting Clerk made the following statement:

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

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Mrs. Tsukamoto moved adoption of the Resolutions listed on the Consent Agenda. Ms. Baillie seconded the motion. There was no Council discussion, and the motion passed with the following roll call vote recorded:

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

R 252-2009

RESOLUTION OF THE BOROUGH OF MADISON APPROVING
APPOINTMENT OF MICHAEL GIORDANO TO ACTING LEADMAN IN
ROADS DEPARTMENT

WHEREAS, the Superintendent of Public Works has recommended that Michael Giordano be appointed to the position of Acting Leadman in the Madison Roads Department; and

WHEREAS, the Madison Borough Council, after due consideration, has determined to appoint Michael Giordano to the position of Acting Leadman in the Madison Roads Department.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, that Michael Giordano is hereby appointed to the position of Acting Leadman in the Madison Roads Department effective September 29, 2009.

BE IT FURTHER RESOLVED that provided Michael Giordano continues to serve in this capacity, he will be entitled to receive a one (1%) percent differential in compensation effective October 14, 2009.

R 253-2009

RESOLUTION OF THE BOROUGH OF MADISON AUTHORIZING HALLOWEEN
PARADE WITHIN THE BOROUGH OF MADISON TO BE HELD ON SATURDAY,
OCTOBER 31, 2009

WHEREAS, the Madison Recreation Department and Madison Chamber of Commerce have requested permission to hold their annual Halloween Parade on Saturday, October 31, 2009; and

WHEREAS, the parade will begin at 12:30 p.m., and proceed on a route approved by the Madison Borough Police Chief, said route beginning at the Green Village Road School field to Green Village Road to Main Street turning onto Waverly Place and finishing on Waverly Place; and

WHEREAS, the Recreation Director recommends approval of this request.

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NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Madison, in the County of Morris, and State of New Jersey, that the request of the Madison Recreation Department and Madison Chamber of Commerce to hold their annual Halloween parade in Madison on Saturday, October 31, 2009, as described herein is hereby approved, subject to any safety requirements that are imposed by the Madison Police Department.

R 254-2009

Removed from the Agenda and the # retired

R 255-2009

RESOLUTION OF THE BOROUGH OF MADISON AUTHORIZING
DISBURSEMENT FROM MUNICIPAL FUNDS FOR PROPERTY DAMAGE
RESULTING FROM A SURGE IN ELECTRICITY

WHEREAS, claims for property damage were filed with the Borough by Borough residents Daniel Dacey, Jr., Anna Farndell, Guillermo Urrea and Allen Himmelsteib, due to a surge in electricity which damaged appliances and/or electrical equipment; and

WHEREAS, the Borough Administrator has recommended a settlement with Daniel Dacey, Jr., in the total amount of \$1,080.63; and

WHEREAS, the Borough Administrator has recommended a settlement with Anna Farndell, in the total amount of \$3,000.00; and

WHEREAS, the Borough Administrator has recommended a settlement with Guillermo Urrea, in the total amount of \$1,000.00; and

WHEREAS, the Borough Administrator has recommended a settlement with Allen Himmelsteib, in the total amount of \$540.37; and

WHEREAS, the Borough Administrator has recommended that the Borough pay a total of \$5,621.00 for full and final settlement of the matter.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, that settlement as described herein is approved subject to Daniel Dacey, Jr., Anna Farndell, Guillermo Urrea and Allen Himmelsteib signing general releases to the Borough of Madison in a form approved by the Borough Attorney.

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R 256-2009

Removed from the Agenda and the # retired

R 257-2009

RESOLUTION OF THE MADISON BOROUGH COUNCIL AWARDING CONTRACT TO CIFELLI & SON GENERAL CONSTRUCTION, INC. OF NUTLEY NJ FOR PROJECT ENTITLED POMEROY ROAD RECONSTRUCTION

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

WHEREAS, the lowest qualified bid was submitted by Cifelli & Son General Construction, Inc., in the amount of \$459,047.00; and

WHEREAS, the Borough Engineer has recommended that the Borough Council award the contract to Cifelli & Son General Construction, Inc. in the amount of \$459,047,00; and

WHEREAS, the Director of Finance has attested that funds will be available in an amount not to exceed \$459,047.00 for this purpose which funds were appropriated by Ordinance 46-2009.

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

1. The contract for the reconstruction of Pomeroy Road is hereby awarded to Cifelli & Son General Construction, Inc., based upon its bid in the amount of \$459,047.00.

2. The Mayor and Borough Clerk are hereby authorized and directed on behalf of the Borough to enter into the contract with Cifelli & Son General Construction, Inc., in a form acceptable to the Borough Attorney.

R 258-2009

RESOLUTION OF THE BOROUGH OF MADISON ACCEPTING DONATION OF NEW ROOF FOR THE LUCY D ANTHONY FIELD HOUSE FROM WHITEY VITALE

WHEREAS, Whitey Vitale has generously offered to donate labor and material to repair the roof of the fieldhouse at the Lucy D. Anthony Field to the Borough; and

WHEREAS, the Borough Council has concluded that it would be in the best interest of the Borough to accept the donated labor and materials.

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NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Madison in the County of Morris in the State of New Jersey that the Borough accepts the donation of the above described labor and materials.

BE IT FURTHER RESOLVED that the Borough of Madison expresses its gratitude to Whitey Vitale.

R 259-2009

RESOLUTION OF THE BOROUGH OF MADISON REQUESTING THE DIRECTOR OF LOCAL GOVERNMENT SERVICES TO APPROVE THE INSERTION OF AN ITEM OF REVENUE IN THE BUDGET OF THE YEAR 2009

WHEREAS, N.J.S.A. 40A:87 provides the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the budget of any County or Municipality when such items shall have been made available by law and the amount thereof was not determined at the time of the adoption of the budget; and

WHEREAS, said Director may also approve the insertion of any items of appropriation for equal amount; and

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Council of the Borough of Madison, in the County of Morris and State of New Jersey, hereby requests the Director of Local Government Services to approve the insertion of an item of revenue in the budget year 2009 in the sum of \$110,786.00, which is now available as a revenue from the New Jersey Department of Health and Senior Services Grant No. 10-930-BT-L-1 in the amount of \$110,786,00;

BE IT FURTHER RESOLVED that the like sum of \$110,786.00 is hereby appropriated under the caption of “Local Public Health Emergency Response to HINI Grant”; and

BE IT FURTHER RESOLVED that the above is a result of a “State Grant of \$110,786.00 from the New Jersey Department of Health and Senior Services Grant No. 10-930-BT-L-1.”

R 260-2009

RESOLUTION OF THE BOROUGH OF MADISON APPROVING RAFFLES LICENSE APPLICATION SUBMITTED BY ST. VINCENT MARTYR CHURCH

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

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ST. VINCENT MARTYR CHURCH

I.D. No. 274-1-812

R.A. No. 1132 – Off Premise

March 20, 2010

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

R 261-2009

RESOLUTION OF THE MADISON BOROUGH COUNCIL AWARDING CONTRACT TO KEVCO ELECTRIC, INC. OF BLOOMFIELD, NJ FOR PROJECT ENTITLED KINGS-PROSPECT SIGNAL REPLACEMENT

WHEREAS, the Borough of Madison publicly advertised for bids for the signal replacement at Kings Road and Prospect Street (the “Contract”) in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.; and

WHEREAS, the lowest qualified bid was submitted by Kevco Electric, Inc. of Bloomfield, NJ, in the amount of \$226,315.75; and

WHEREAS, the Borough Engineer has recommended that the Borough Council award the contract to Kevco Electric, Inc. in the amount of \$226,315.75; and

WHEREAS, the Director of Finance has attested that funds will be available in an amount not to exceed \$226,315.75 for this purpose which funds were appropriated by Ordinance 58-2008.

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

1. The contract for the signal replacement at Kings Road and Prospect Street is hereby awarded to Kevco Electric, Inc., based upon its bid in the amount of \$226,315.75.

2. The Mayor and Borough Clerk are hereby authorized and directed on behalf of the Borough to enter into the contract with Kevco Electric, Inc., in a form acceptable to the Borough Attorney.

R 262-2009

RESOLUTION OF THE BOROUGH OF MADISON EXPRESSING OPPOSITION TO A-3062 AND S-1303 REGARDING “INHERENTLY BENEFICIAL USES”

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WHEREAS, A-3062 and S-1303 will establish renewable energy as an “inherently beneficial use” for purposes of municipal zoning; and

WHEREAS, A-3062/S-1303 defines “inherently beneficial use” as a use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare, including, but not limited to, a hospital, school, child care center, group home or a wind, solar or photovoltaic energy facility or structure; and

WHEREAS, the Borough of Madison does not believe that renewable energy facilities demonstrate the same level of public benefit as is associated with other “inherently beneficial uses” including hospitals, schools, child care centers and group homes; and

WHEREAS, while the intent of A-3062/S-1303 is admirable, it permits solar panel fields and wind generation facilities to be placed anywhere in a municipality without regard to the comprehensive municipal master plan and zoning regulations or any other state planning initiatives; and

WHEREAS, while the Borough of Madison supports the intent to develop legislation that will encourage renewable energy in New Jersey, it must be done without negatively effecting the growth, farmland and open space preservation plans of municipalities; and

WHEREAS, municipalities are best equipped to address local land use issues and should be provided with discretion to establish appropriate regulations and controls consistent with their master plan.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Madison in the County of Morris, State of New Jersey, hereby urge Governor Corzine to veto A-3062 and S-1303; and

BE IT FURTHER RESOLVED that a copy of this Resolution shall be forwarded to Senator Thomas H Kean, Jr., Assemblyman Jon M. Bramnick and Assemblywoman Nancy Munoz, the New Jersey League of Municipalities and the Governor of the State of New Jersey.

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INVITATION FOR DISCUSSION (2 of 2)

Mayor Holden opened the meeting to the public for their opportunity to ask questions and make comments on any subject. The Mayor asked that, upon recognition by the Chair, the person shall proceed to the lectern and give his/her name and address in an audible tone of voice, and print the same on the sheet provided for the record. **He/she shall limit his/her statement to three (3) minutes or less.**

Sam Cerciello, Park Avenue, suggested improvements to the intersection of Central Avenue and Cook Avenue, and to the Borough leaf collection program.

UNFINISHED BUSINESS - None

APPROVAL OF VOUCHERS

On motion by Mrs. Tsukamoto, seconded by Ms. Baillie and carried, the following vouchers of the Borough of Madison were approved for payment, and the supporting documentation of said vouchers was made part of the Supplemental Minute Book.

Public Safety	\$28,505.86
Health & Public Assistance	5,130.98
Public Works & Engineering	228,151.20
Community Affairs	2,100.66
Finance & Borough Clerk	1,271,505.75
Utilities	<u>452,590.82</u>
Total	<u>\$1,987,985.27</u>

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

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

Nays: None

NEW BUSINESS - None

ADJOURN AND RECONVENE EXECUTIVE SESSION

There being no further business to come before the Council, the meeting was adjourned at 10:15 p.m. and the Executive Session immediately reconvened.

RECONVENE AND ADJOURN

The Regular Meeting reconvened at 11:15 p.m. and immediately adjourned.

Respectfully submitted,

Elizabeth Osborne
Acting Borough Clerk
Approved October 26, 2009 (EO)