

The regular meeting of the Town Council of the Town of Newton was held on the above date at 7:00 p.m. Present were Mrs. Diglio, Mrs. Becker, Mr. Levante, Deputy Mayor Flynn, Mayor Elvidge, Thomas S. Russo, Jr., Town Manager, Debra J. Millikin, Deputy Town Manager and Ursula Leo, Esq., Town Attorney.

Mayor Elvidge made the following declaration that "in accordance with the Open Public Meetings Act, notice of this public meeting was given to the two newspapers of record and posted on the official bulletin board on December 31, 2013."

Mayor Elvidge led the Pledge of Allegiance to the flag and the Clerk called the roll and upon motion of Mrs. Diglio, seconded by Deputy Mayor Flynn, and carried, the minutes of September 10, 2014 Regular Meeting and September 10, 2014 Executive Meeting were approved as amended.

OPEN TO THE PUBLIC

Mayor Elvidge read the following statement:

"At this point in the meeting, the Town Council welcomes comments from any member of the public on any topic. To help facilitate an orderly meeting and to permit the opportunity for anyone who wishes to be heard, speakers are asked to limit their comments to 5 minutes. If reading from a prepared statement, please provide a copy and email a copy to the Clerk's Office after making your comments so it may be properly reflected in the minutes."

Mr. Russo introduced Bernd E. Hefele, Esq., representative of Newton Donuts, Inc., who addressed the Town Council to request an amendment to the Merriam Gateway Redevelopment Plan. Mr. Hefele advised Council that Newton Donuts, his client, has proposed locating a free standing drive-thru Dunkin Donuts at 65 Sparta Avenue, Newton, but the proposed structure does not conform to the current redevelopment zone requirements, therefore needs Council approval for an amendment. Mr. Hefele as well as the Architect outlined the proposed structure and addressed questions of the Governing Body.

Jessica Caldwell, Town Planner, agreed with the proposed structure and suggested the Planning Board address all the other issues.

Jennifer Credidio, Esq. outlined the next steps required.

After a brief discussion, Council unanimously agreed to move forward with a plan amendment. Mr. Russo will proceed as directed.

Neil Flaherty, 154 Sparta Avenue, questioned the payment of \$745.00 to the

Newton Hockey Club which was addressed by Ms. Babcock, CFO. Mr. Flaherty expressed his disappointment with the inconsistency of providing funding to the recreation organizations within the community while seeking tax payments from the tax-exempt property owners.

Karen Harden-Kitchell, 58 West End Avenue, commended the Town on their Newton pool facility. Mrs. Harden-Kitchell also commended Kathy Citterbart and Nannette Crift for addressing code enforcement issues promptly. She obtained permission to clean up the garden located on McGuire's property (Main Street) and questioned whether parking is permitted and was advised its private property and permission would be granted from the owners (McGuires).

Thomas Trudgeon, Jr., 10 Dogwood Avenue, questioned why the Town decided to eliminate the ice fishing at Morris Lake. Mr. Russo advised that it is an insurance liability, which is why ice fishing was eliminated. Deputy Mayor Flynn also expressed his disappointment with eliminating ice fishing, but understands the Town's insurance liability. After a brief discussion, Mayor Elvidge and Deputy Mayor Flynn asked for the Town to review this issue again. Mrs. Leo reiterated the liability is "great" and upon reviewing the risks, the ice fishing was eliminated. After a brief discussion, Mayor Elvidge agreed to have the Town review the ice fishing policy one more time.

Wallace (Hank) Smith, a Newton resident, also expressed disappointment with the elimination of ice fishing, questioned whether a waiver could be signed by the all participants using Morris Lake for ice fishing. Mr. Smith advised that he is a Newton Recreation member and complained of the people using Memory Park soccer fields without permission.

Mrs. Leo advised a signed waiver for ice fishing will not protect the Town a 100% for liability if a drowning occurs.

COUNCIL & MANAGER REPORTS

A. NJMEBF- Dave Vozza

Dave Vozza, owner of The Vozza Agency, provided an outline and update on the various employee benefits through the Vozza Agency. Mr. Vozza presented the Council with their first dividend check in the amount of \$54,285.51. He feels as time

goes on the dividend checks will increase. Mr. Vozza also presented a check in the amount of \$1,000.00 to sponsor the Country Cool Festival event to be held on Saturday, October 18, 2014 at Sussex County Community College.

B. Dispatch Services

Mr. Russo updated Council on receiving word from seven (7) municipalities who are not renewing their dispatch contracts with the Town of Newton beginning January 2015. The Town is still waiting on response from two (2) other municipalities. The Town is developing staffing models and contingencies for same.

Councilman Levante questioned the amount of lost revenue for non-renewal of dispatch services and was advised by Mr. Russo that the loss of revenue right now is between \$250,000 - \$300,000.

Mr. Russo updated Council on the Country Cool Festival to take place on Saturday, October 18, 2014 from noon- 5:00 p.m. Mr. Russo listed the sponsors and their generous donations received so far. He also updated the events for the day as well as the vendors and bands who will be participating.

ORDINANCES

Mayor Elvidge directed the Clerk to read aloud the following Ordinance relative to introduction of same.

ORDINANCE #2014-19

AN ORDINANCE TO AMEND THE CODE OF THE TOWN OF NEWTON BY ADOPTION OF THE REVISED TRANSECT ZONE MAP, ATTACHMENT 1 OF CHAPTER 320, ENTITLED "ZONING"

The aforementioned **ORDINANCE** was offered by Mr. Levante, who moved its introduction, seconded by Mrs. Becker and roll call resulted as follows:

Mrs. Diglio	Yes	Mrs. Becker	Yes
Deputy Mayor Flynn	Yes	Mr. Levante	Yes
Mayor Elvidge		Yes	

BE IT RESOLVED by the Town Council of the Town of Newton that the above Ordinance be introduced for the first reading, with hearing on same to be held on October 27, 2014.

Mayor Elvidge directed the Clerk to read aloud the following Ordinance relative to introduction of same.

ORDINANCE #2014-20

ORDINANCE REAPPROPRIATING \$131,000 PROCEEDS OF OBLIGATIONS NOT NEEDED FOR THEIR ORIGINAL PURPOSES IN ORDER TO PROVIDE A SUPPLEMENTAL APPROPRIATION FOR THE IMPROVEMENT OF SPRING STREET IN AND BY THE TOWN OF NEWTON, IN THE COUNTY OF SUSSEX, NEW JERSEY

The aforementioned **ORDINANCE** was offered by Mrs. Diglio, who moved its introduction, seconded by Mrs. Becker and roll call resulted as follows:

Mrs. Diglio	Yes	Mrs. Becker	Yes
Deputy Mayor Flynn	Yes	Mr. Levante	Yes
Mayor Elvidge		Yes	

BE IT RESOLVED by the Town Council of the Town of Newton that the above Ordinance be introduced for the first reading, with hearing on same to be held on October 15, 2014.

OLD BUSINESS

a.) Special Improvement District (SID)

Mr. Russo noted that he is working on the PowerPoint presentation therefore there is no update on SID at this time.

CONSENT AGENDA

Mayor Elvidge read the following statement:

"All items listed with an asterisk () are considered to be routine and non-controversial by the Town Council and will be approved by one motion. There will be no separate discussion of these items unless a Council member so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the Agenda."*

Mr. Russo reviewed the consent agenda with the Town Council.

RESOLUTION #171-2014*

CAPITAL BUDGET AMENDMENT										
Whereas , the local Capital Budget for the year 2014 was approved on the 14th day of April 2014; and								RESOLUTION #171-2014		
Whereas , it is desired to amend said adopted Capital Budget Section;										
Now, Therefore Be It Resolved , by the Town Council of the Town of Newton, County of Sussex that the following Capital Budget amendment of 2014 be made.										
RECORDED VOTE:	AYES	(NAYS	(ABSTAIN	(
(Insert last name)		(((
		((ABSENT	(
		(((
CAPITAL BUDGET (Current Year Action)										
2014										
PLANNED FUNDING SERVICES FOR CURRENT YEAR 2014										
PROJECT	PROJECT NUMBER	ESTIMATED COST	AMOUNTS RESERVED IN PRIOR YEARS	2014 BUDGET APPROPRIATIONS	CAPITAL IMPROVEMENT FUND	CAPITAL SURPLUS	GRANTS IN AID AND OTHER FUNDS	DEBT AUTHORIZED	TO BE FUNDED IN FUTURE YEARS	
reappropriate from:										
Recycle Wall/Memory Park	#2012-13 i	-11,000.00			-550.00			-10450.00		
Firehouse #2 Ext.Doors	#2013-11 c	-5,000.00			-250.00			-4750.00		
Senior Shuttle Bus	#2013-11 i	-115,000.00			-5750.00			-109250.00		
reappropriate to:										
Improve. Spring Street	#2014-20	131,000.00			6550.00			124450.00		
TOTAL ALL PROJECTS		0.00	0.00	0.00	0.00	0.00	0.00	0.00		
3 YEAR CAPITAL PROGRAM 2014 - 2016										
Anticipated Project Schedule and Funding Requirements										
PROJECT	PROJECT NUMBER	ESTIMATED COST	ESTIMATED COMPLETION TIME	FUNDING AMOUNTS PER YEAR					TO BE FUNDED IN FUTURE YEARS	
				BUDGET YEAR: 2014	2015	2016	2017	2018		
reappropriate from:										
Recycle Wall/Memory Park	#2012-13 i	-11,000.00	2014	-550.00					-10,450.00	
Firehouse #2 Ext.Doors	#2013-11 c	-5,000.00	2014	-250.00					-4,750.00	
Senior Shuttle Bus	#2013-11 i	-115,000.00	2014	-5,750.00					-109,250.00	
reappropriate to:										
Improve. Spring Street	#2014-20	131,000.00	2015	6,550.00					124,450.00	
TOTAL ALL PROJECTS		0.00		0.00					0.00	
3 YEAR CAPITAL PROGRAM 2014 - 2016										
SUMMARY OF ANTICIPATED FUNDING SOURCES AND AMOUNTS										
PROJECT	ESTIMATED COST	BUDGET APPROPRIATIONS			CAPITAL IMPROVEMENT FUND	CAPITAL SURPLUS	GRANTS IN AID AND OTHER FUNDS	BONDS AND NOTES		
		CURRENT YEAR 2014	FUTURE YEARS					GENERAL	SELF LIQUIDATING	ASSESSMENT
reappropriate from:										
Recycle Wall/Memory Park	-11000.00				-550.00			-10450.00		
Firehouse #2 Ext.Doors	-5000.00				-250.00			-4750.00		
Senior Shuttle Bus	-115000.00				-5750.00			-109250.00		
reappropriate to:										
Improve. Spring Street	131000.00				6550.00			124450.00		
TOTAL ALL PROJECTS	0.00				0.00	0.00	0.00	0.00		
Be It Further Resolved, that two certified copies of this resolution be filed forthwith in the Office of the Director of Local Government Services, and one copy be forwarded to the Town Auditor and Chief Financial Officer.										
It is hereby certified that this is a true copy of a resolution amending the Capital Budget section as adopted by the Governing Body on the 22nd day of September, 2014.										
Certified by:										
Date	Lorraine A. Read, RMC Municipal Clerk									

RESOLUTION #172-2014*

AUTHORIZE REFUND OF REDEMPTION MONIES TO OUTSIDE LIEN HOLDER FOR BLOCK 8.05, LOT 2

WHEREAS, at the Municipal Tax Sale held on October 9, 2013, a lien was sold on Block 8.05, Lot 2, also known as 46 Trinity Street, for 2012 delinquent water and sewer charges; and

WHEREAS, this lien, which is known as Tax Sale Certificate #1381, was sold to US Bank Cust. for Pro Cap III LLC for 18% redemption fee; and

WHEREAS, Ocwen Loan Servicing LLC., mortgage company has effected redemption of Certificate #1381 in the amount of \$2,270.82;

NOW, THEREFORE BE IT RESOLVED, by the Town Council of the Town of Newton that this Governing Body acknowledges that US Bank Cust. for Pro Cap III LLC is entitled to the redemption in the amount of \$2,270.82; and

BE IT FURTHER RESOLVED, that the Tax Collector be authorized to issue a check in the amount of \$2,270.82 for the redemption of Certificate #1381 payable to US Bank Cust. for Pro Cap III LLC, 50 So. 16th Street, Suite 1950, Philadelphia, PA 19102.

RESOLUTION #173-2014*

AUTHORIZE REFUND OF REDEMPTION MONIES TO OUTSIDE LIEN HOLDER FOR 14.06, LOT 7

WHEREAS, at the Municipal Tax Sale held on October 9, 2013 a lien was sold on Block 14.06, Lot 7, also known as 246 Spring Street, for 2012 delinquent real estate taxes and water and sewer charges; and

WHEREAS, this lien, which is known as Tax Sale Certificate #1385, was sold to US Bank Cust. for Pro Cap III LLC for 18% redemption fee; and

WHEREAS, Seterus, Inc., mortgage company has effected redemption of Certificate #1385 in the amount of \$3,680.85;

NOW, THEREFORE BE IT RESOLVED, by the Town Council of the Town of Newton that this Governing Body acknowledges that US Bank Cust. for Pro Cap III LLC is entitled to the redemption in the amount of \$3,680.85; and

BE IT FURTHER RESOLVED, that the Tax Collector be authorized to issue a check in the amount of \$3,680.85 for the redemption of Certificate #1385 payable to US Bank Cust. for Pro Cap III LLC, 50 So. 16th Street, Suite 1950, Philadelphia, PA 19102.

RESOLUTION #174-2014*

REFUND OF MONIES FOR TAXES, DUE TO A STATE TAX COURT JUDGMENT FOR BLOCK 1.01, LOT 19

WHEREAS, **Saul A. Wolfe** the attorney representing Sussex Nine, Inc. owner of Block 1.01 Lot 19, also known as 249 High Street filed a State Tax Court Appeal to lower the 2012 assessment on said block and lot; and

WHEREAS, on August 21, 2014, the Newton Tax Office received a Judgment which has been issued by the State Tax Court ordering a reduction in assessment for the tax year 2012. This order has resulted in a refund of monies in the total amount of \$9,554.95;

NOW, THEREFORE BE IT RESOLVED, by the Town Council of the Town of Newton that this Governing Body acknowledges that Saul A. Wolfe, Esq., the attorney representing Sussex Nine, Inc. is entitled to a refund in the amount of \$9,554.95; and

BE IT FURTHER RESOLVED, that the Treasurer is authorized to issue a check in the amount of \$9,554.95 to, Sussex Nine Inc c/o Barnhill Conv., c/o Saul A. Wolfe, 293 Eisenhower Parkway, Livingston, NJ 07039.

RESOLUTION #175-2014*

APPROVE BILLS AND VOUCHERS FOR PAYMENT

BE IT RESOLVED by the Town Council of the Town of Newton that payment is hereby approved for all vouchers that have been properly authenticated and presented for payment, representing expenditures for which appropriations were duly made in the 2013 and 2014 Budgets adopted by this local Governing Body, including

any emergency appropriations, and where unexpended balances exist in said appropriation accounts for the payment of such vouchers.

TOWN BILLS

1,373.18	E.A. Morse & Company, Inc.	34089
106.65	Aurora Electrical Supply, LLC.	34090
123.50	Sussex Car Wash Inc.	34091
195.23	Elizabethtown Gas	34092
66.26	JCP&L	34093
1,837.32	SCMUA	34094
112.00	Teets, Michael D	34095
245.80	Centurylink Communicatons, Inc.	34096
28.18	Federal Express	34097
6,043.50	Newton First Aid Squad	34098
120.00	Ambassador Medical Service	34099
112.00	Holzhauer, Scott	34100
1,333.33	Sloan, James P, P.C., Inc.	34101
654.00	J & D Sales & Service, LLC.	34102
37.50	Kithcart, Brock	34103
230.00	T.A. Mountford Company, Inc.	34104
322.02	Galls Incorporated	34105
275.00	Minisink Press Inc.	34106
501.48	Ben Shaffer & Associates, Inc.	34107
150.00	Sussex County Fire Academy	34108
745.00	Newton Hockey c/o J Hoffman	34109
535.80	Dempsey Uniform & Supply Inc	34110
140.00	Millikin, Debra	34111
495.00	L-3 Comm. Mobile-Vision	34112
10.00	Sussex County Clerk's Assn	34113
695.40	Boonton Tire Supply Inc.	34114
2,000.18	McGuire, Inc.	34115
1,105.12	Statewide Insurance Fund	34116
112.00	Miller, Jason	34117
1,482.05	Verizon Wireless, Inc.	34118
165.00	Petro-Mechanics, Inc.	34119
75.78	Mr. John, Inc.	34120
37.50	Teresa Ann Oswin	34121
330.00	Vogel, Chait, Collins, Schneider, PC	34122
230.26	Home Depot, Inc.	34123
90.00	Professional Govt Educators Inc.	34124
835.78	Staples Business Advantage, Inc.	34125
12.50	Krave Café	34126
310.00	Skylands Area Fire Equip & Training	34127
344.72	Municipal Graphics Inc	34128
5,209.45	Rachles/ Michele's Oil Company, Inc.	34129
1,227.46	Taylor Oil Co., Inc.	34130
2,250.00	Laddey, Clark & Ryan, LLP	34131
326.48	Laddey, Clark & Ryan, LLP	34132
2,800.00	Laddey, Clark & Ryan, LLP	34133
117.50	Northern Rain	34134
2,760.00	Trimboli & Prusinowski, LLC.	34135
863.01	Penteledata	34136
134,628.50	NJMEBF	34137
1,770.00	Chelbus Cleaning Co., Inc.	34138
39.88	Woodruff Energy US, Inc.	34139
330.00	The NJ Shade Tree Federation	34140
131.58	Cartridge World	34141
121.50	Kerry Deckert	34142
805.00	J. Caldwell & Associates, LLC.	34143

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2,564.50	Crafco, Inc.	34144
472.08	Toyota Motor Credit Corp.	34145
481.99	Sunlight General	34146
210.00	USA Hoistco., Inc.	34147
244.98	Cintas Fire Protection	34148
100.00	District Connect, LLC.	34149
1,140.00	Tropicana Atlantic City Corp	34150
301.20	Roseann Jenkins & Greenwalk LLP	34151
9,554.95	Sussex nine Inc C/O Barnhill Conv.	34152
1,250.00	Nixle	34153
12.96	Joseph Zukowski	34154
701.95	Roseann Jenkins & Greenwalk LLP	34088
187,204.35	Payroll Account	141061
5,180.18	Boonton Tire Supply Inc.	34087
77.16	Elavon	141060

CAPITAL

692.00	Pellow, Harold & Assoc., Inc.	8332
640.00	Laddey, Clark & Ryan, LLP.	8333
1,845.00	J. Caldwell & Associates, LLC.	8334
26,656.00	Edge Property Maintenance, Inc.	8335
5,599.20	All Seating	8336
1,950.00	Phoenix Advisors, LLC.	8337
8,971.00	H & H Environmental	8338
60.00	NJ Motor Vehicle Services	8331
28,359.00	Beyer-Warnock Fleet & Leasing, LLC.	8330

Total TOWN BILLS \$461,267.90

WATER AND SEWER ACCOUNT

4,982.00	Schmidt's Wholesale, Inc.	14465
49.50	Elizabethtown Gas	14466
325.40	JCP&L	14467
1,372.91	Pumping Services, Inc.	14468
212.75	SCMUA	14469
14.27	Sussex County P & H, Inc.	14470
7,099.43	Coyne Chemical Corp., Inc.	14471
439.95	Campbell's Small Engine Inc.	14472
584.95	Lou's Glass	14473
267.80	Dempsey Uniform & Supply Inc	14474
450.00	Treasurer, State of New Jersey	14475
163.07	Verizon Wireless, Inc.	14476
1,250.00	Smalley, John	14477
86.00	Water Environment Federation	14478
9.99	Advance Auto Parts	14479
41.47	Staples Business Advantage, Inc.	14480
12.50	Krave Café	14481
304.00	Laddey, Clark & Ryan, LLP	14482
4,068.00	Accurate Waste Removal Inc.	14483
119.90	Penteledata	14484
26,135.50	NJMEBF	14485
58.00	Dustin McGarry	14486
178.48	One Call Concepts, Inc.	14487
171.12	Woodruff Energy US, Inc.	14488
2,015.65	Hatch Mott MacDonald	14489
193.94	Fastenal Company, Inc.	14490
702.65	Sunlight General	14491
1,250.00	Nixle	14492

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740.98	Ray Palmer Associates	14493
34,664.98	Payroll Account	146028

CAPITAL

1,965.82	Hatch Mott MacDonald	2357
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Total WATER & SEWER BILLS \$89,931.01

TRUST ACCOUNT

1,474.50	Pellow, Harold & Assoc., Inc.	3287
650.78	McManimon, Scotland & Baumann, LLC	3288
1,335.00	Vogel, Chait, Collins, Schneider, PC	3289
632.50	J. Caldwell & Associates, LLC.	3290
316.00	Craig Wolters	3291
1,405.00	Payroll Account	147116

Total TRUST ACCOUNT BILLS \$5,813.78

FEDERAL / STATE GRANTS

4,242.50	J. Caldwell & Associates, LLC.	1229
2,000.51	Payroll Account	141109

Total DEV. FEDERAL / STATE GRANTS BILLS \$6,243.01

The Clerk presented an application for an off-premise raffle (50-50 & Raffle) from Katie's House, 29 Moran Street, Newton to be held on December 17, 2014 at 8:00 p.m. at Dre's Restaurant, 188 Spring Street, Newton. It was noted that the application was in order and accompanied by the prescribed fees.

The Clerk presented an application for an on-premise raffle (50/50) from the Sussex County Community College Foundation, One College Hill Road, Newton to be held on October 18, 2014 from noon until 5:00 p.m. at Sussex County Community College, Newton. It was noted that the application was in order and accompanied by the prescribed fees.

The Clerk presented an application for an on-premise raffle (50/50 & Tricky Tray) from the Catholic Academy of Sussex County, for St. Joseph's Regional School, 20 Jefferson Street, Newton to be held on October 17, 2014 at 20 Jefferson Street, Newton. It was noted that the application was in order and accompanied by the prescribed fees.

A motion was made by Deputy Mayor Flynn to approve the **COMBINED ACTION RESOLUTIONS**, seconded by Mr. Levante and roll call resulted as follows:

Mrs. Diglio	Yes	Mrs. Becker	Yes
Deputy Mayor Flynn	Yes	Mr. Levante	Yes
Mayor Elvidge		Yes	

DISCUSSION

a.) Non-Union New Hire Retiree Health Benefits Resolution- Draft

Mr. Russo reviewed the draft Resolution which would eliminate post-retirement medical benefits for all full-time and part-time non-union employees hired on or after January 1, 2015.

Mr. Russo indicated this would be a significantly large savings in the future for the Town. This would also be a tool to be utilized in future contracts with the various bargaining units.

Additional questions were asked by Council and addressed by Mrs. Villaverde, Human Resource Director.

After a brief discussion, Council unanimously agreed to move forward with the draft Resolution for the next Council meeting.

b.) Tax Exempt Properties- Phase II

Mr. Russo thanked Debra and Suzie for creating the list of municipalities and their percentage of tax exempt properties in New Jersey.

Mr. Russo reviewed the tax exempt list with Council and explained that eighty (80) municipalities had 20% or greater in tax exempt properties valuation.

Mr. Russo requested direction on moving forward with a letter to New Jersey State League of Municipalities (NJSLOM) as well as Legislation addressing the issue of tax exempt properties.

After a lengthy discussion, the Council unanimously believes sending a letter and Resolution can only help with the tax exempt issues at large.

Mr. Russo and Mrs. Leo will draft a Resolution for the next Council meeting. Roll call resulted as follows:

Mrs. Diglio	Yes	Mrs. Becker	Yes
Deputy Mayor Flynn	Yes	Mr. Levante	Yes
Mayor Elvidge		Yes	

OPEN TO THE PUBLIC

Neil Flaherty, 154 Sparta Avenue, disagreed with requesting funds from non-profit agencies (i.e. churches). Mr. Flaherty agrees all tax exempt properties do provide services to the community and should not be requested to contribute. He also commented on the health benefits COBRA option noting that it's a balancing act.

Mike Malone, 59 Trinity Street, questioned Ordinance 2014-20 which was addressed by Mr. Russo.

Karen Hardin-Kitchell, 58 West End Avenue, agrees that non-profit organizations should "pay for a piece of the pie".

COUNCIL & MANAGER COMMENTS

The Council had no further business to be discussed.

EXECUTIVE SESSION

A motion offered by Mrs. Becker, seconded by Deputy Mayor Flynn to enter into Executive Session, and roll call resulted as follows:

Mrs. Diglio	Yes	Mrs. Becker	Yes
Deputy Mayor Flynn	Yes	Mr. Levante	Yes
Mayor Elvidge	Yes		

RESOLUTION #176-2014

A RESOLUTION PROVIDING FOR A MEETING NOT OPEN TO THE PUBLIC IN ACCORDANCE WITH THE PROVISIONS OF THE NEW JERSEY OPEN PUBLIC MEETINGS ACT, N.J.S.A. 10:4-12

WHEREAS, the Town Council of the Town of Newton is subject to certain requirements of the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq.; and

WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:4-12, provides that an Executive Session, not open to the public, may be held for certain specific purposes when authorized by Resolution; and

WHEREAS, it is necessary for the Town Council of the Town of Newton to discuss in a session not open to the public certain matters relating to the items authorized by N.J.S.A. 10:4-12b and designated below:

- (1) Contract Negotiations
- (2) Potential Litigation

NOW, THEREFORE, BE IT RESOLVED, by the Town Council of the Town of Newton, assembled in public session on September 22, 2014, that an Executive Session closed to the public shall be held on September 22, 2014, at 8:42 PM in the Town of Newton Municipal Building, 39 Trinity Street, Newton, NJ, for the discussion of matters relating to the specific items designated above.

It is anticipated that the deliberations conducted in closed session may be disclosed to the public upon the determination of the Town Council that the public interest will no longer be served by such confidentiality.

Council came out of Executive Session at 9:44 p.m.

A motion was made by Deputy Mayor Flynn to approve the **RESOLUTION #177-2014**, seconded by Mrs. Becker and roll call resulted as follows:

Mrs. Diglio	Yes	Mrs. Becker	Yes
Deputy Mayor Flynn	Yes	Mr. Levante	Yes
Mayor Elvidge	Yes		

RESOLUTION #177-2014

RESOLUTION AUTHORIZING PROFESSIONAL SERVICE AGREEMENT WITH MAX SPANN REAL ESTATE & AUCTION

WHEREAS, the Town of Newton previously attempted to sell two (2) municipally owned properties, as listed on Schedule "A" attached, as shown on the Town of Newton Tax Map ("Properties") and there were no bidders for the properties; and

WHEREAS, the Town Council desires to use the services of a professional real estate auction company in order to market and auction the properties, which professional services are awarded under non-fair and open contracts pursuant to N.J.S.A. 40A:11-5; and

WHEREAS, the Town Council desires to hire Max Spann Real Estate & Auction Company to market the Properties and conduct the auction. Max Spann Real Estate & Auction Company shall be paid by the buyers of the property through a 10% buyer's premium to be added to the successful bid amount. However, in the event that the properties are sold and the buyer's premium does not equal or exceed \$4,000, the Town shall be responsible for paying the difference between the auction company's marketing investment of \$4,000 and the buyer's premium paid. In the event that both properties do not sell, the Town is not responsible for paying the marketing investment;

NOW, THEREFORE BE IT RESOLVED by the Town Council of the Town of Newton, that the Town Council authorizes the Mayor and Municipal Clerk to execute a professional services agreement with Max Spann Real Estate & Auction Company; and

BE IT FURTHER RESOLVED that this Resolution and a copy of the professional services agreement shall be provided to Max Spann Real Estate & Auction Company, and shall be advertised, and is on file and available for public inspection in the office of the Municipal Clerk; and

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately and shall be void and of no effect in the event that Max Spann Real Estate & Auction Company does not sign the professional services agreement.

SCHEDULE "A"

Block/Lot	Street Address	Size	Status of Property	Zone
22.09/7 (formerly 1208/11)	27 Orchard St	0.344 acres	vacant land	T-3

19.01/6 (formerly 1302/2.01)	7 Stuart St	0.2818 acres	1801 sq. ft. masonry building	T-3
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A motion was made by Mr. Levante to approve the **RESOLUTION #178-2014**, seconded by Deputy Mayor Flynn and roll call resulted as follows:

Mrs. Diglio	Yes	Mrs. Becker	Yes
Deputy Mayor Flynn	Yes	Mr. Levante	Yes
Mayor Elvidge	Yes		

RESOLUTION #178-2014

AUTHORIZING THE PUBLIC SALE OF REAL PROPERTY PURSUANT TO N.J.S.A. 40A:12-13

WHEREAS, the Town of Newton is the owner of property set forth in Schedule "A" which property is no longer needed or required for municipal use; and

WHEREAS, the Newton Town Council deems it in the best interest of the Town of Newton to sell the property by public auction sale in accordance with the provisions of N.J.S.A. 40A:12-13(a) et seq.; and

WHEREAS, the Town of Newton is utilizing the services of Max Spann Real Estate & Auction Company, an auction company in order to market the property. A condition of the sale as reflected below is that the successful bidder shall be responsible for paying the "Buyer's Premium" to Max Spann Real Estate & Auction Company equal to ten percent (10%) of the sales price, this fee shall be added to the successful bidder's bid; and

NOW, THEREFORE BE IT RESOLVED, by the Newton Town Council as follows:

1. The Town of Newton shall sell, pursuant to the provisions of N.J.S.A. 40A:12-13(a), the property listed on Schedule "A". If a minimum sale price is set for the property it is reflected in Schedule "A", which sum is not less than the fair market value.
2. The sale shall be conducted as an auction and shall take place as published per paragraph 3 below (hereinafter referred to as "sale date") at the Town of Newton Municipal Building, 39 Trinity Street, Newton, New Jersey 07860.
3. A copy of this resolution shall be posted on the bulletin board or other conspicuous place in the Municipal Building. Notice of the public sale shall be published in the official Town of Newton newspaper by two insertions at least once a week during two consecutive weeks, the last publication shall be within seven (7) days prior to the sale date.
4. In the event any of the properties being sold are less than the minimum size required for development under the Town of Newton Zoning Ordinance and are without any capital improvements, contiguous property owner(s) shall have the right of first refusal as provided for in N.J.S.A. 40A:12-13.2. In order to exercise the right of first refusal, the contiguous property owner(s) must appear at the public sale and exercise their right of first refusal by bidding on the property. For properties subject to N.J.S.A. 40A:12-13.2, a copy of this Resolution shall be mailed to the contiguous property owners at their last known address as reflected on the tax duplicates. The Resolution shall be mailed at the time that Notice is first published as provided for in paragraph three of this Resolution.

5. The property shall be sold subject to the following terms and conditions:
- (a) The descriptions of the property are intended as a general guide only and may not be accurate. No representations of any kind are made by the Town of Newton as to the conditions of the property; the premises are being sold in the present condition "as is".
 - (b) The property shall be sold for not less than the amount, if any set forth in Schedule "A".
 - (c) The Town of Newton does not warrant or certify title to the property and in no event shall the Town of Newton be liable for any damages to the purchaser/successful bidder if title is found unmarketable and the purchaser/successful bidder waives any and all right in damages or by way of liens against the Town of Newton. The sole remedy being the right to receive a refund, prior to closing, of the deposit paid in the event title is found unmarketable. It shall be the obligation of the successful purchaser to examine title to the premises prior to the closing. In the event of closing and later finding of defect of title, the Town of Newton shall not be responsible for the same nor shall it be required to refund money or correct any defect in title or be held liable for damages.
 - (d) Acceptance of the highest bid shall constitute a binding agreement of sale, and the purchaser shall be deemed to agree to comply with the terms and conditions of the sale contained in this resolution.
 - (e) Bidder shall deposit with the Town cash, check or money order in the amount of not less than 10% of the bid price at the time of sale. In the event the successful bidder fails to deposit 10% of the bid price at the time of the sale, the Town of Newton will re-auction the property at the same public sale. If the successful bidder fails to pay the deposit, the bidder shall be responsible for any difference between their bid and the final sale bid in the event such bid is lower than the bid of the original bidder.
 - (f) The Purchaser must pay the balance of the purchase price, plus (1) the sum of \$450 for the legal services incurred by the Town, (2) a Buyer's Premium directly to the auctioneer, Max Spann Real Estate & Auction Company, which is equal to ten percent (10%) of the successful bidder's bid, (3) the Town of Newton's advertising and recording fees within thirty (30) days after the date the Council adopts a resolution confirming the winning bid(s). and (4) realty transfer fees, if any. The balance shall be paid by certified funds. Once the purchase price has been paid, a Quitclaim Deed without covenants will be prepared by the Town Attorney and, after execution by the Town Officials, shall be recorded with the Sussex County Clerk's Office by the Town Attorney. Additional work performed by the Town Attorneys beyond the standard preparation of the sale resolutions, Deed and closing statement shall be billed at the rate charged by the Town Attorney's and shall be the responsibility of the purchaser, which fees must be paid prior to the Deed being recorded.
 - (g) The Deed will be subject to all matters of record which may affect title, including what an accurate survey may reveal, as well as the requirements of the Ordinances of the Town of Newton. The Town of Newton reserves an easement for all natural or constructed

drainage systems or waterways on the premises and the continued right of maintenance and flow.

Property (1) in Schedule "A", the real property located at 27 Orchard Street, Block 22.09, Lot 7 (formerly Block 1208, Lot 11.

Property (2) in Schedule "A", the real property located at 7 Stuart Street, Block 19.01, Lot 6 (formerly Block 1302, Lot 2.01), is being sold subject to the Town of Newton and the public retaining an access easement for access to other property owned by the Town of Newton. All easements shall be in a form acceptable to the Town of Newton and its attorney.

- (h) The property will be sold subject to the current year taxes, pro rated from the date of sale.
- (i) The Town Council reserves the right to withdraw this offer to sell, or upon completion of the bidding to accept or reject any or all bids for the property or to waive any informality.
- (j) All bidders currently owning property within the Town of Newton must have their taxes, as well as sewer and water charges, paid to date in order to be a qualified bidder. In the event the bidder's taxes or sewer or water charges are delinquent, the bidder shall be deemed unqualified and such bid shall be rejected.
- (k) This sale is made subject to all applicable laws, statutes, regulations and ordinances of the United States, State of New Jersey and the Town of Newton.
- (l) No employee, agent or officer of the Town of Newton has any authority to waive, modify or amend any of the conditions of sale.
- (m) The purchaser must abide by appropriate zoning, subdivision, health and building regulations and code and agrees that this sale will not be used as grounds to support any variance from or realization of the regulations.
- (n) The failure of the Purchaser to close on title within the time provided for in Subsection 5(f) of this Resolution shall constitute a breach of this Agreement unless the Town agrees in writing prior to that date to extend the time of the closing. In the event the Purchaser fails to close within the dates provided for in Section 5(f) or such date as maybe extended by the Town, the deposit paid by the Purchaser shall be retained by the Town as liquidated damages. The Town of Newton is entitled to retain the Purchaser's deposit to the extent of any expenses and/or losses it incurs including but not limited to advertising costs, attorneys fees, lost tax revenues from the date of the required closing as well as additional cost of resale and the difference in the sales price, to the extent the property is sold for a lower price and any subsequent sale. The only exception to this section is in the event that the Purchaser fails to close as a result of the title being unmarketable, in which case the Purchaser shall be entitled to a refund of their deposit as provided for in Section 5(c) of this Resolution.
- (o) The purchase shall not be used for any County Board of Taxation, Tax Court of New Jersey, or in any Courts of the State as grounds to support a challenge of the existing assessments with regard to other properties.

- (p) The sale shall be subject to final approval by the Newton Town Council who may accept or reject any bid in their absolute discretion.
 - (q) Acceptance of the highest bid by the Town shall constitute a binding agreement of sale and purchaser shall be deemed to agree to comply with the terms and conditions of this resolution.
 - (r) In the event the property being sold to a contiguous property owner is less than the minimum size required for development under the municipal zoning ordinances and is without capital improvements, it shall merge with the successful bidder's existing adjoining property. The deeded conveyance shall contain a restriction that there shall be no subdivision of the merged lot or lots created by this sale and no structure or improvements shall be built on or under such property. The successful bidder shall provide a copy of their existing property Deed to the Town Attorney within seven (7) days of their being notified that they are the successful bidder of the sale.
6. If any section, subsection, sentence, clause or phrase of this resolution is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this resolution.
7. Potential Bidders are advised:
- (a) To conduct all necessary title searches prior to the date of sale.
 - (b) No representations of any kind are made by the Town of Newton as to the conditions of the Property, including habitability or usability; the Property is being sold in its present conditions "as is".
 - (c) The Property will be conveyed by a Quit Claim Deed and such conveyance shall be subject to all covenants, restrictions, reservations and easements established of record or by prescription and without representation as to character of title of the Property to be conveyed.
 - (d) The highest bidder for the Property shall have the right, at its sole cost and expense, to obtain a new survey of the Property. Provided such survey depicts the Property and is certified to be correct to the Town of Newton, the Town of Newton shall utilize the legal description drawn in accordance with such survey in the Deed of conveyance, provided the highest bidder provides such legal description and a copy of the certified survey to the Town of Newton not less than one week prior to the date set for closing of title.
8. Additional Terms the Successful Bidder must comply with:
- (a) To abide by appropriate zoning, subdivision, health and building regulations and codes and stipulate that this sale will not be used as grounds to support any variance from the regulations.
 - (b) That the failure to close title as agreed shall forfeit to the Town of Newton any and all money deposited with the Town.
9. This resolution shall take effect immediately.

SCHEDULE "A"

Block/Lot	Street Address	Size	Status of Property	Zone

September 22, 2014

22.09/7 (formerly 1208/11)	27 Orchard St	0.344 acres	vacant land	T-3
19.01/6 (formerly 1302/2.01)	7 Stuart St	0.2818 acres	1801 sq. ft. masonry building	T-3

There being no further business to be conducted, upon motion of Mrs. Diglio, seconded by Mrs. Becker and unanimously carried, the meeting was adjourned at 9:47 p.m.

Respectfully submitted,



Lorraine A. Read, RMC
Municipal Clerk