

September 28, 2009

The regular meeting of the Town Council of the Town of Newton was held on the above date at 7:18 p.m. Present were Mrs. Unhoch, Mrs. Becker, Mrs. Le Frois, Mr. Ricciardo, Mayor Elvidge and Town Manager, Mr. Thomas Russo, Jr.

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 22, 2008.”

Mayor Elvidge led the invocation and the Pledge of Allegiance to the flag. The Clerk called the roll and upon completion of same, upon motion made by Mr. Ricciardo seconded by Mrs. Unhoch and carried that the minutes of September 16, 2009 (Special), September 16, 2009 (Executive Session) and September 16, 2009 (Regular) were approved. Mrs. Le Frois abstained.

Mr. Russo read the following Proclamation to congratulate Liberty Towers on their 35<sup>th</sup> Anniversary.

**P R O C L A M A T I O N**

**Liberty Towers 35<sup>th</sup> Anniversary**

**WHEREAS**, the Newton Housing Authority was established on April 14, 1969 in an effort to respond to the immediate need for affordable senior housing in the Town of Newton and the greater Sussex County community; and

**WHEREAS**, on September 11, 1974 the Newton Housing Authority opened the doors to Liberty Towers, the first public housing authority facility in Sussex County; and

**WHEREAS**, Liberty Towers through the support of its residents, staff, volunteers and Executive Director, Dr. Kimberly Woodhull, has won several national awards of merit, and with 2 ½ acres of beautiful lawns, garden and patio areas, activities and events throughout the year, is one of the most desirable places to live for senior citizens in all of Sussex County;

**NOW, THEREFORE BE IT PROCLAIMED**, by the Mayor and Town Council of the Town of Newton, that we hereby congratulate the Newton Housing Authority on the 35<sup>th</sup> Anniversary of Liberty Towers, and extend our deepest appreciation and admiration for all of their efforts throughout the years to provide “*Housing with a Heart*” for so many of our valued residents.

Mayor Elvidge read the following Proclamation honoring the Halsted Middle School Students’ for their contribution in helping to develop the Wind and Solar Energy Ordinance.

**P R O C L A M A T I O N**

**Jim Hofmann and the Halsted Middle School Technology Classes**

**WHEREAS**, under the guidance of their teacher Jim Hofmann, the students of the Halsted Middle School Technology classes, in an effort to promote their commitment to alternative energy sources, have worked with the Town to encourage the creation of a model Wind and Solar Energy Ordinance; and

**WHEREAS**, the Newton Town Council acknowledges the students’ efforts and would also like to promote the safe, effective and efficient use of wind energy systems and solar energy systems to reduce the on-site consumption of utility-supplied electricity; and

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**WHEREAS**, the Newton Town Council used the students' contribution to create and establish local zoning regulations to standardize and streamline the requirements for wind and solar energy systems so the public may utilize clean, renewable energy resources in a cost-effective and timely manner;

**NOW, THEREFORE BE IT PROCLAIMED**, by the Mayor and Town Council of the Town of Newton, that we hereby recognized and applaud the efforts of Jim Hofmann and the students in the Halsted Middle School Technology classes for their efforts in promoting the benefits of wind and solar energy systems and their commitment to educating the public on alternative energy sources.

Mr. Hofmann indicated that he had the 7<sup>th</sup> Grade students working on this project and indicated that the girls present this evening were a big contributors to organizing and streamlining the information, which was submitted to the Town for review. Mr. Hofmann was glad the Ordinance was created to address the needs of the future. The students also created a few models of wind towers which will be displayed at Town Hall.

Mayor Elvidge declared the meeting open to the public.

### **PUBLIC**

There was no one from the public to be heard.

### **Council & Manager Reports**

Mr. Russo read correspondence from the Greater Newton Chamber of Commerce requesting permission to hold their annual Holiday Parade on Spring Street on Saturday, November 28, 2009. Council is invited to participate in the Holiday Parade which begins at 10:00 a.m. The governing body had no objection to hosting the Holiday Parade on Saturday, November 28, 2009.

Mr. Russo read correspondence from Chief Jeff Schiffner requesting permission for the Newton Fire Department to take Truck 801 to County Parade in Hamburg on Saturday, October 3, 2009. In addition, the Newton Fire Department has requested permission to hold their annual Halloween Parade on Saturday, October 31, 2009, with more details to follow. The Council had no objection to either request.

Mr. Russo noted that Resolution #181-2009, a resolution for the transfer of the person-to-person and place-to-place, will be handled after Executive Session is held.

Mr. Russo congratulated his fellow "20 under 40" New Jersey Herald honorees, Kristi Becker and Jessica Caldwell. Mrs. Becker congratulated Mr. Russo as well.

Councilwoman Unhoch commended the Municipal Clerk's office for a job well done on the annual Town-Wide Garage Sale held on Friday, Saturday, and Sunday, September 25 – 27, 2009.

Councilwoman Le Frois reported to the governing body the recent walking tour of the

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Town of Newton on Saturday, September 26, 2009. Mrs. Le Frois indicated that Drew University students pick a Town in the State of New Jersey each year to perform a walking tour. There were approximately 15 participants who took part in the two hour tour of Newton. Mr. Wayne McCabe, a professor at Drew University, along with other representatives, gave history presentations on the Town of Newton. Mrs. Le Frois advised that the Town “showed well” during the walking tour.

Mrs. Le Frois reported that the Town website has been launched and great feedback has been received and congratulated the Town on this endeavor.

Mrs. Le Frois also reported that meetings have begun to investigate the purchase of a new ladder truck with the Newton Fire Department and will keep Council informed.

Mayor Elvidge commended Mrs. Le Frois on her participation and very informative historic information presented to the Drew University students during the walking tour.

**Public Hearing on SECTV Franchise Renewal (Mark Hontz, Esq.)**

Mr. Mark Hontz, Esq., addressed the Town Council and updated them on the progress to date surrounding the SECTV Franchise renewal process. Mr. Hontz advised that representatives from Service Electric Cable TV are present tonight to make their formal presentation to the governing body as well as hold a public hearing.

Mr. Michael Meliti, Esq., Ms. Cherie LoPresti, SECTV representative, and Mr. Rinaldo M. D’Argenio, Esq., (attorney for SECTV), made a presentation regarding the service provided to the Town of Newton. Mr. Meliti outlined all the connections which are provided to several facilities within the Town of Newton, with little or no cost. Mr. Meliti noted additional service lines which were also negotiated on behalf of the Town at cost.

After a lengthy discussion, it was noted that Service Electric Cable TV will create a draft ordinance for the franchise renewal which will include all of the customer service details outlined this evening.

Mayor Elvidge opened the Service Electric Cable TV Franchise hearing to the public.

There being no one from the public to be heard, upon motion of Mr. Ricciardo, seconded by Mrs. Unhoch and carried, the hearing was closed.

Mr. Hontz indicated that the next step is awaiting the draft ordinance for the franchise renewal from Service Electric Cable and will then forward to the Town Manager for review. Mr. Hontz noted that the Town is on schedule with the renewal process.

**ORDINANCES**

Mayor Elvidge directed the Clerk to read aloud the following Ordinance relative to final adoption.

**ORDINANCE # 2009-22**

**AN ORDINANCE ESTABLISHING REGULATIONS FOR WIND AND SOLAR ENERGY SYSTEMS**

**WHEREAS**, it is the purpose of this ordinance to promote the safe, effective and efficient use of wind energy systems and solar energy systems to reduce the on-site consumption of utility-supplied electricity; and

**WHEREAS**, the Town of Newton finds that:

1. Wind and solar energy are abundant, renewable, and nonpolluting energy resources;
2. Converting wind and solar energy to electricity will reduce our dependence on nonrenewable energy resources, and decrease the air and water pollution that results from the use of conventional energy sources;
3. Distributed small and medium wind and solar energy systems will also enhance the reliability and power quality of the power grid, reduce peak power demands, and help diversify the State's energy supply portfolio; and
4. Small wind and solar energy systems make the electricity supply market more competitive by promoting customer choice.

**WHEREAS**, New Jersey's Renewable Portfolio Standards (RPS) require each supplier/provider, as defined at NJAC 14:8-1.2, that sells electricity to retail customers in New Jersey to provide a percentage of their retail electricity sales from renewable energy sources, beginning at 3.5 percent in 2004 and increasing to 22.5 percent by 2021; and

**WHEREAS**, existing local zoning regulations do not address wind or solar power, which while not intended to discourage the installation of wind turbines or solar panels, can substantially increase the time and costs required to obtain necessary local land-use permits; and

**WHEREAS**, the Town Council of the Town of Newton find that it is necessary to standardize and streamline the requirements for wind and solar energy systems so that these clean, renewable energy resources can be utilized in a cost-effective and timely manner in our municipality; and

**WHEREAS**, this Ordinance was based in part on a Model Wind Energy Ordinance developed for the Town of Newton by the Halsted Middle School Technology Classes taught by Jim Hofmann, Teacher of Technology and Alternative Energy Advisor, and the Town Council wishes to thank them for their efforts and commitment to alternative energy sources.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Newton that:

**Section 1. Title**

This ordinance shall be referred to as the Wind and Solar Energy Systems Ordinance.

**Section 2. Purpose**

The purpose of this Ordinance is to establish guidelines for siting small and medium Wind Energy Systems and Solar Energy Systems. The goals are as follows:

- A. To promote the safe, effective, and efficient use of Wind Energy Systems and Solar Energy Systems in order to reduce the consumption of fossil fuels in producing electricity.

- B. Preserve and protect public health, safety, welfare, and quality of life by minimizing the potential adverse impacts of Wind Energy Systems and Solar Energy Systems.
- C. To establish standards and procedures by which the siting, design, engineering, installation, operation, and maintenance of Wind Energy Systems and Solar Energy Systems shall be governed.

**Section 3. Definitions**

- A. “Ambient Sound Level” is the amount of background noise at a given location prior to the installation of a Wind Energy System or Solar Energy System which may include, but not be limited to, traffic, machinery, lawnmowers, human activity, and the interaction of wind with the landscape. The ambient sound level is measured on the dB(A) weighted scale as defined by the American National Standards Institute.
- B. “Anemometer” is a temporary wind speed indicator constructed for the purpose of analyzing the potential for utilizing a wind energy turbine at a given site. This includes the tower, base plate, anchors, cables and hardware, wind direction vanes, booms to hold equipment, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location.
- C. “Decibel” is defined as unit of measure used to express the magnitude of sound pressure and sound intensity. Decibels shall be measured on the dB(A) weighted scale as defined by the American National Standards Institute.
- D. “Decommissioning” is the process of terminating operation and completely removing WET(s) and all related buildings, structures, foundations, access roads, and equipment.
- E. “Medium Wind Energy Turbine” (MWET) is a tower-mounted wind energy system that converts wind energy into electricity through the use of equipment which includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries, or other components used in the system. The MWET has a nameplate capacity that does not exceed two hundred and fifty (250) kilowatts. The Total Height does not exceed one hundred and fifty (150) feet.
- F. “Nacelle” refers to the encasement which houses all of the generating components, gear box, drive tram, and other equipment.
- G. “Net-Metering” is a special metering and billing agreement between utility companies and their customers, which facilitates the connection of renewable energy generating systems to the power grid.
- H. “Occupied Building” is a residence, school, hospital, church, public library, business, or any other building used for public gatherings.
- I. “Operator” is the entity responsible for the day-to-day operation and maintenance of a Wind Energy System or Solar Energy System.
- J. “Owner” is the individual or entity, including their respective successors and assigns that have equity interest or own the Wind Energy System or Solar Energy System in accordance with this ordinance.
- K. “Rotor Diameter” is the cross-sectional dimension of the circle swept by the rotating blades of a WET.
- L. “Shadow Flicker” is the moving shadow, created by the sun shining through the rotating blades of a Wind Energy Turbine (WET). The amount of shadow flicker created by a WET is calculated by a computer model that takes into consideration turbine location, elevation, tree cover, location of all structures, wind activity, and sunlight.

- M. “Small Tower-Mounted Wind Energy Turbine” (STMWET) is a tower-mounted wind energy system that converts wind energy into electricity through the use of equipment which includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries, or other components used in the system. The STMWET has a nameplate capacity that does not exceed thirty (30) kilowatts. The Total Height does not exceed one hundred and twenty (120) feet.
- N. “Small Structure-Mounted Wind Energy Turbine” (SSMWET) converts wind energy into electricity through the use of equipment which includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries, or other components used in the system. A SSMWET is attached to a structure’s roof, walls, or other elevated surface. The SSMWET has a nameplate capacity that does not exceed ten (10) kilowatts. The Total Height does not exceed fifteen (15) feet as measured from the highest point of the roof, excluding chimneys, antennae, and other similar protuberances.
- O. “Structure” is any building or other structure, such as a municipal water tower that is a minimum of twelve (12) feet high at its highest point of roof and is secured to frost-footings or a concrete slab.
- P. “Solar Energy System” is an energy system which converts solar energy to usable thermal, mechanical, chemical or electrical energy through the use of a solar panel or solar panel array and associated equipment.
- Q. “Solar Panel” is photovoltaic panel, or hot air or water panel collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.
- R. “Solar Panel Array” is a collection of multiple solar panels mounted or arranged together, providing energy to the same primary user, as part of a solar energy system.
- S. “Total Height” is the vertical distance measured from the ground level at the base of the tower or the ground mounted solar panel array to the uppermost vertical extension of any blade, or the maximum height reached by any part of the Wind Energy Turbine (WET) or the uppermost extent of any individual solar panel.
- T. “Tower” is a freestanding monopole that supports a Wind Energy Turbine (WET).
- U. “Upwind Turbine” is a Wind Energy Turbine (WET) positioned in a manner so that the wind hits the turbine blades before it hits the tower in order to avoid the thumping noise which can occur if the wind is disrupted by hitting the tower before the blades.
- V. “Wind Energy Turbine / Wind Energy System” (WET) is any structure-mounted, small or medium wind energy conversion system that converts wind energy into electricity through the use of a Wind Generator and includes the nacelle, rotor, tower, and pad transformer, if any.

#### **Section 4. Temporary Uses**

The following is permitted in all zoning districts as a temporary use, in compliance with the provisions contained herein, and the applicable Wind Energy System regulations.

- A. Anemometers
  - 1. The construction, installation, or modification of an anemometer tower shall require a building permit and shall conform to all applicable local, state, and federal applicable safety, construction, environmental, electrical, communications, and FAA requirements.
  - 2. An anemometer shall be subject to the minimum requirements for height, setback, separation, location, safety requirements, and decommissioning that correspond to the size of the Wind Energy Turbine that is proposed to be constructed on the site.
  - 3. An anemometer shall be permitted for no more than thirteen (13) months.

**Section 5. Permitted Uses**

- A. A Small Tower-Mounted Wind Energy Turbine (STMWET) over 40 feet in height shall be considered a permitted use in all zoning districts on lots of one (1) acre and greater in size subject to site plan approval by the Planning Board. STMWET shall not be erected, constructed, installed, or modified as provided in this Ordinance unless all required local, state and federal approvals and permits have been issued to the Owner(s) or Operator(s). For parcels located within the Town's Historic District, review by the Historic Commission is required.
- B. Small Structure-Mounted Wind Energy Turbine (SSMWET) and STMWETs up to 40 feet in height shall be a permitted use in all zoning districts provided that the required setbacks can be met. STMWETs up to 40 feet in height must also obtain site plan approval from the Planning Board. SSMWET shall not be erected, constructed, installed, or modified as provided in this Ordinance unless a building permit has been obtained from the Town of Newton and all required state and federal approvals and permits have been issued to the Owner(s) or Operator(s). For parcels located within the Town's Historic District, review by the Historic Commission is required.
- C. Solar Energy Systems. Solar panels shall be permitted as a rooftop installation in any zoning district provided that they meet the site design standards set forth below and a building permit is obtained from the Town of Newton. Ground arrays shall be permitted on lots of one (1) acre or greater in any zoning district subject to site plan approval by the Planning Board. A solar energy system shall not be erected unless all local, state and federal permits and approvals have been issued to the Owner(s) or Operator(s). For parcels located within the Town's Historic District, review by the Historic Commission is required.
- D. Exemptions. Solar energy systems under 20 square feet in size shall be exempt from the requirements of this ordinance.

**Section 6. Conditional Uses**

- A. A Medium Wind Energy Turbine (MWET) shall be a conditional use in all non-residential districts subject to the following conditions:
  - a. Minimum Lot Size: Five (5) acres.
  - b. Maximum Height: 150 feet.
  - c. Quantity: No more than one (1) MWET shall be installed for every two and one-half (2.5) acres of land included in the parcel.
  - d. Setback & Separation:
    - i. Occupied Building Setback: The setback from all occupied buildings on the applicant's parcel shall be a minimum of twenty (20) feet measured from the base of the Tower.
    - ii. Property Line Setbacks: With the exception of the locations of public roads (see below), drain rights-of-way and parcels with occupied buildings (see above), the internal property line setbacks shall be equal to the Total Height of the MWET as measured from the base of the Tower. This setback may be reduced to a distance agreed upon as part of the special use permit if the applicant provides a registered engineer's certification that the WET is designed to collapse, fall, curl, or bend within a distance or zone shorter than the height of the WET.
    - iii. Public Road Setbacks: Each MWET shall be set back from the nearest public road a distance equal to the Total Height of the MWET, determined at the nearest boundary of the underlying right-of-way for such public road.
  - e. Tower Separation: MWET/tower separation shall be based on industry standard and manufacturer recommendation.
  - f. Each MWET including accessory buildings and other related structures shall be mounted on a tubular tower and a non-reflective, non-obtrusive color (e.g. white, gray, black). The appearance of turbines, towers and buildings shall be maintained throughout the life of the MWET.

- g. Shadow Flicker: The MWET owner(s) and/or operator(s) shall conduct an analysis on potential shadow flicker at any occupied building with direct line-of-sight to the MWET. The analysis shall identify the locations of shadow flicker that may be caused by the project and the expected durations of the flicker at these locations from sun-rise to sun-set over the course of a year. The analysis shall identify situations where shadow flicker may affect the occupants of the buildings for more than 30 hours per year, and describe measures that shall be taken to eliminate or mitigate the problems. Shadow Flicker on a building shall not exceed thirty (30) hours per year.

**Section 7. Solar Energy System and Wind Energy System Site Design Requirements**

A. All Wind Energy Systems are subject to the following minimum standards:

1. Small Structure-Mounted Wind Energy Turbines (SSMWET) shall meet the following specific standards:
  - a. Minimum setbacks: The setback of the SSMWET shall be a minimum of fifteen (15) feet from the property line, public right-of-way, public easement, or overhead utility lines if mounted directly on a roof or other elevated surface of a structure. If the SSMWET is affixed by any extension to the side, roof, or other elevated surface, then the setback from the property line or public right-of-way shall be a minimum of fifteen (15) feet. The setback shall be measured from the furthest outward extension of all moving parts.
  - b. Height: The height of a SSMWET shall not exceed 15 feet as measured from the highest point of the roof, excluding chimneys, antennae, and other similar protuberances.
  - c. Location: The SSMWET shall not be affixed to the wall on the side of a structure facing a road. SSMWET shall not be affixed to temporary structures or structures without permanent foundations.
  - d. Quantity: Not more than one (1) SSMWET shall be installed on any one structure on a particular property.
  - e. Separation: If more than one SSMWET is installed, a distance equal to the height of the highest SSMWET must be maintained between the base of each SSMWET and they must be affixed to separate permanent structures.
2. Small Tower-Mounted Wind Energy Turbines (STMWET) shall meet the following specific standards:
  - a. Minimum Lot Size: One (1) Acre.
  - b. Minimum setbacks for STMWET. For lots between one acre and three acres, wind turbines shall be set back from all property lines a distance equal to 100% of the height of the structure including the blades. For lots larger than three acres, wind turbines shall be set back from all property lines a distance equal to 200% of the height of the structure including the blades. No portion of the wind generator shall extend beyond any overhead utility lines, unless written permission is granted by the utility that owns and/or controls the lines.
  - c. Height: The Total Height of a STMWET shall not exceed one hundred twenty (120) feet.
  - d. Location: The STMWET shall only be located in a rear yard of a property that has an occupied building.
  - e. Occupied Building Setback: The setback from all occupied buildings on the applicant's parcel shall be a minimum of twenty (20) feet measured from the base of the Tower.
  - f. Other Setbacks: The setback shall be equal to the Total Height of the STMWET, as measured from the base of the Tower, from the property line, public right-of-way, public easement, or overhead public utility lines. This setback may be reduced if the applicant provides a registered engineer's certification that the WET is designed to collapse, fall, curl, or bend within a distance or zone shorter than the height of the wind turbine.
  - g. Quantity: No more than one (1) STMWET shall be installed on any parcel of property.
3. "Upwind" turbines shall be required.
4. Wind turbines shall not be permitted in any front yard.

5. Visual Appearance:
    - a. A Wind Energy System, including accessory buildings and related structures shall be a non-reflective, non-obtrusive color (e.g. white, gray, black). The appearance of the turbine, tower, and any ancillary facility shall be maintained throughout the life of the Wind Energy System.
    - b. A Wind Energy System shall not be artificially lighted, except to the extent required by the FAA or other applicable authority, or otherwise necessary for the reasonable safety and security thereof.
    - c. Wind Energy Systems shall not be used for displaying any advertising (including flags, streamers, or decorative items), except for identification of the turbine manufacturer.
    - d. All ground equipment shall be screened from view to the maximum extent practical with landscaping and/or decorative fencing.
  6. Ground Clearance: The lowest extension of any blade or other exposed moving component of a Wind Energy System shall be at least fifteen (15) feet above the ground (at the highest point of the natural grade within thirty [30] feet of the base of the tower for SSMWET and STMWET, fifty [50] feet for a MWET) and, in addition, at least fifteen (15) feet above any outdoor surfaces intended for human use, such as balconies or roof gardens, that are located directly below the Wind Energy System.
  7. Noise: Noise emanating from the operation of a Wind Energy System shall not exceed, at any time, the lowest ambient sound level that is present between the hours of 9:00 p.m. and 9:00 a.m. at any property line of a residential or agricultural use parcel or from the property line of parks, schools, hospitals, and churches. Noise emanating from the operation of a Wind Energy System shall not exceed, at any time, the lowest ambient noise level plus 5 dBA that is present between the hours of 9:00 p.m. and 9:00 a.m. at any property line of a non-residential or non-agricultural use parcel.
  8. Vibration: Vibrations shall not be produced which are humanly perceptible beyond the property on which a Wind Energy System is located.
  9. Guy Wires: Guy wires shall not be permitted as part of a Wind Energy System over 35 feet in height.
  10. Electrical System: All electrical controls, control wiring, grounding wires, power lines, and system components shall be placed underground within the boundary of each parcel at a depth designed to accommodate the existing land use to the maximum extent practicable. Wires necessary to connect the wind generator to the tower wiring are exempt from this requirement. The electrical system shall meet National Electric Code standards.
- B. Solar panels installed as a rooftop installation shall meet the following standards: The solar panels shall not exceed a height of eight inches from the rooftop. In no event shall the placement of the solar panels result in a total height, including building and panels, greater than what is permitted in the zoning district in which they are located for the principal building.
- C. Solar panels shall be permitted as ground arrays in accordance with the following:
1. All ground arrays shall be set back a distance of 20 feet from all property lines in a residential zoning district or in conformance with the bulk standards for accessory structures in commercial districts as provided in the Town's Zoning Ordinance.
  2. Ground arrays shall not be permitted in a front yard.
  3. Ground arrays shall be located so that any glare is directed away from an adjoining property.
  4. Ground arrays shall not exceed a height of 15 feet.
  5. Ground arrays shall be screened from view with landscaping buffers and/or decorative fencing.
- D. Permit Application Requirements:
1. Name of property owner(s), address, and parcel number.

2. A site plan shall include maps (drawn to scale) showing the proposed location of all components and ancillary equipment of the Solar or Wind Energy System, property lines, physical dimensions of the property, existing building(s), setback lines, right-of-way lines, public easements, overhead utility lines, sidewalks, non-motorized pathways, roads and contours. The site plan must show all properties within 200 feet of the subject parcel as well as the location and use of all structures within 200 feet.
3. The proposed type and height of the Solar Energy System, SSMWET or STMWET to be constructed; including the manufacturer and model, product specifications including maximum noise output (measured in decibels), total rated generating capacity, dimensions, rotor diameter (if applicable), and a description of ancillary facilities.
4. Documented compliance with the noise requirements set forth in this Ordinance.
5. Documented compliance with applicable local, state and national regulations including, but not limited to, all applicable safety, construction, environmental, electrical, communications, and FAA requirements.
6. Proof of applicant's liability insurance.
7. Evidence that the utility company has been informed of the customer's intent to install an interconnected, customer-owned generator and that such connection has been approved. Off-grid systems shall be exempt from this requirement.
8. Other relevant information as may be reasonably requested.
9. Signature of the Applicant.
10. In addition to the Permit Application Requirements previously listed, a SSMWET Application shall also include the total proposed number of SSMWETs.
11. In addition to the Permit Application Requirements previously listed, a STMWET and MWET Application shall also include a description of the methods that will be used to perform maintenance on the STMWET/MWET and the procedures for lowering or removing the STMWET/MWET in order to conduct maintenance.

E. Site Plan Requirements:

- a. Site Plan Drawing: All applications for a ground array Solar Energy System, SMWET or MWET conditional use permit shall be accompanied by a detailed site plan map that is drawn to scale and dimensioned, displaying the following information:
  - i. Existing property features to include the following: property lines, physical dimensions of the property, land use, zoning district, contours, setback lines, right-of-ways, public and utility easements, public roads, access roads (including width), sidewalks, non-motorized pathways, large trees, and all buildings. The site plan must also include the adjoining properties as well as the location and use of all structures and utilities within three hundred (300) feet of the property.
  - ii. Location and height of all proposed Solar Panels, SWETs or MWETs, buildings, structures, ancillary equipment, underground utilities and their depth, towers, security fencing, access roads (including width, composition, and maintenance plans), electrical sub-stations, and other above-ground structures and utilities associated with the proposed energy system.
  - iii. Additional details and information as required by the Special Use requirements of the Zoning Ordinance or as requested by the Planning Board.
- b. Site Plan Documentation: The following documentation shall be included with the site plan:
  - i. The contact information for the Owner(s) and Operator(s) of the energy system as well as contact information for all property owners on which the energy system is located.
  - ii. A copy of the lease, or recorded document, with the landowner(s) if the applicant does not own the land for the proposed energy system. A statement from the landowner(s) of the leased site that he/she will abide by all applicable terms and conditions of the use permit, if approved.
  - iii. Identification and location of the properties on which the proposed energy system will be located.
  - iv. The proposed number, representative types and height of each solar array, SWET or MWET to be constructed; including their manufacturer and

model, product specifications including maximum noise output (measured in decibels), total rated capacity, rotor diameter (if applicable), and a description of ancillary facilities.

- v. Documents shall be submitted by the developer/manufacturer confirming specifications for SMWET or MWET tower separation.
- vi. Documented compliance with the noise and shadow flicker requirements set forth in this Ordinance.
- vii. Engineering data concerning construction of the solar panels, SWET or MWET and its base or foundation, which may include, but not be limited to, soil boring data.
- viii. A New Jersey Licensed Professional Engineer shall certify that the solar panels, SWET or MWET meets or exceeds the manufacturer's construction and installation standards.
- ix. Anticipated construction schedule.
- x. A copy of the maintenance and operation plan, including anticipated regular and unscheduled maintenance. Additionally, a description of the procedures that will be used for lowering or removing the solar panels, SWET or MWET to conduct maintenance, if applicable.
- xi. Documented compliance with applicable local, state and national regulations including, but not limited to, all applicable safety, construction, environmental, electrical, and communications. The SWET or MWET shall comply with Federal Aviation Administration (FAA) requirements.
- xii. Proof of applicant's liability insurance.
- xiii. Evidence that the utility company has been informed of the customer's intent to install an interconnected, customer-owned generator and that such connection has been approved. Off-grid systems shall be exempt from this requirement.
- xiv. Other relevant information as may be requested by the Planning Board to ensure compliance with the requirements of this Ordinance.
- xv. Following the completion of construction, the applicant shall certify that all construction is completed pursuant to the Conditional Use Permit.
- xvi. A written description of the anticipated life of each solar panel, SWET or MWET; the estimated cost of decommissioning; the method of ensuring that funds will be available for decommissioning and site restoration; and removal and restoration procedures and schedules that will be employed if the energy system becomes inoperative or non-functional.
- xvii. The applicant shall submit a decommissioning plan that will be carried out at the end of the solar panels, SWETs or MWET's useful life, and shall describe any agreement with the landowner(s) regarding equipment removal upon termination of the lease.
- xviii. The Town of Newton reserves the right to review all maintenance plans and bonds under this Ordinance to ensure that all conditions of the permit are being followed.
- xix. Signature of the Applicant.

F. Safety Requirements:

1. If the Solar Energy System or Wind Energy System is connected to a public utility system for net-metering purposes, it shall meet the requirements for interconnection and operation as set forth in the public utility's then-current service regulations meeting federal, state, and industry standards applicable to wind power generation facilities, and the connection shall be inspected by the appropriate public utility.
2. The Wind Energy System shall be equipped with an automatic braking, governing or feathering system to prevent uncontrolled rotation, over-speeding, and excessive pressure on the tower structure, rotor blades and other wind energy components unless the manufacturer certifies that a braking system is not necessary.
3. A clearly visible warning sign regarding voltage shall be placed at the base of the wind turbine or solar panel ground array.
4. The structural integrity of the Wind Energy System shall conform to the design standards of the International Electrical Commission, specifically IEC 61400-1, "Wind Turbine Safety and Design" and/or IEC 61400-2, "Small Wind Turbine Safety," IEC 61400-22 "Wind Turbine Certification," and IEC 61400-23 "Blade Structural Testing," or any similar successor standards.

5. MWETs shall also meet the following additional safety requirements:
  - a. Security measures need to be in place to prevent unauthorized trespass and access. Each MWET shall not be climbable up to fifteen (15) feet above ground surfaces. All access doors to MWETs and electrical equipment shall be locked and/or fenced as appropriate, to prevent entry by non-authorized person(s).
  - b. All spent lubricants, cooling fluids, and any other hazardous materials shall be properly and safely removed in a timely manner.
  - c. Each MWET shall have one sign, not to exceed two (2) square feet in area, posted at the base of the tower and on the security fence if applicable. The sign shall contain at least the following:
    - i. Warning high voltage.
    - ii. Manufacturer's and owner/operators name.
    - iii. Emergency contact numbers (list more than one number).
    - iv. The structural integrity of the MWET shall conform to the design standards of the International Electrical Commission, specifically IEC 61400-1, "Wind Turbine Safety and Design," IEC 61400-22 "Wind Turbine Certification," and IEC 61400-23 "Blade Structural Testing," or any similar successor standards.

G. Signal Interference:

1. The Wind Energy System shall not interfere with communication systems such as, but not limited to, radio, telephone, television, satellite, or emergency communication systems.

H. Decommissioning:

1. The Solar Energy System or Wind Energy System Owner(s) or Operator(s) shall complete decommissioning within twelve (12) months after the end of the useful life of the system. Upon request of the owner(s) or assigns of the Solar Energy System or Wind Energy System, and for a good cause, the Town of Newton Planning Board may grant a reasonable extension of time. The Solar Energy System or Wind Energy System will presume to be at the end of its useful life if no electricity is generated for a continuous period of twelve (12) months. All decommissioning expenses are the responsibility of the Owner(s) or Operator(s).
2. If the Solar Energy System or Wind Energy System Owner(s) or Operator(s) fails to complete decommissioning within the period prescribed above, the Town of Newton Council may designate a contractor to complete decommissioning with the expense thereof to be charged to the violator and/or to become a lien against the premises. If the Solar Energy System or Wind Energy System is not owned by the property owner(s), a bond must be provided to the Town of Newton for the cost of decommissioning each Solar Energy System or Wind Energy System.
3. In addition to the Decommissioning Requirements listed previously, the STMWET shall also be subject to the following:
  - a) Decommissioning shall include the removal of each STMWET, buildings, electrical components, and any other associated facilities. Any foundation shall be removed to a minimum depth of sixty (60) inches below grade, or to the level of the bedrock if less than sixty (60) inches below grade.
  - b) The site and any disturbed earth shall be stabilized, graded, and cleared of any debris by the owner(s) of the facility or its assigns. If the site is not to be used for agricultural practices following removal, the site shall be seeded to prevent soil erosion, unless the property owner(s) requests in writing that the land surface areas not be restored.
4. In addition to the Decommissioning Requirements listed previously, the MWET shall also be subject to the following:
  - a) Decommissioning shall include the removal of each MWET, buildings, electrical components, and roads to a depth of sixty (60) inches, as well as any other associated facilities. Any foundation shall be removed to a minimum depth of sixty (60) inches below grade, or to the level of the bedrock if less than sixty (60) inches below grade. Following removal, the location of any remaining wind turbine foundation shall be identified on a map as such and recorded with the deed to the property with the County Register of Deeds.

- b) All access roads to the MWET shall be removed, cleared, and graded by the MWET Owner(s), unless the property owner(s) requests, in writing, a desire to maintain the access road. The Town will not be assumed to take ownership of any access road unless through official action of the Town Council.
- c) The site and any disturbed earth shall be stabilized, graded, and cleared of any debris by the owner(s) of the MWET or its assigns. If the site is not to be used for agricultural practices following removal, the site shall be seeded to prevent soil erosion, unless the property owner(s) requests in writing that the land surface areas not be restored.
- d) If the MWET Owner(s) or Operator(s) fails to complete decommissioning within the period prescribed above the Town may designate a contractor to complete decommissioning with the expense thereof to be charged to the violator and/or to become a lien against the premises. If the MWET is not owned by the property owner(s), a bond must be provided to the Town for the cost of decommissioning each MWET.

I. Public Inquiries & Complaints:

- 1. Should an aggrieved property owner allege that a Solar Energy System or Wind Energy System is not in compliance with the requirements of this Ordinance, the procedure shall be as follows:
  - a. Noise Complaints.
    - i. Notify the Town's Zoning Officer in writing regarding concerns about noise level.
    - ii. If the complaint is deemed sufficient by the Town's Zoning Officer to warrant an investigation, the Town's Zoning Officer will request the aggrieved property owner deposit funds in an amount sufficient to pay for a noise level test conducted by a certified acoustic technician to determine compliance with the requirements of this Ordinance.
    - iii. If the test indicates that the noise level is within Ordinance noise requirements, the Town will use the deposit to pay for the test.
    - iv. If the Solar Energy System or Wind Energy System Owner(s) is in violation of the Ordinance noise requirements, the Owner(s) shall reimburse the Town for cost of the noise level test and take immediate action to bring the Solar Energy System or Wind Energy System into compliance which may include ceasing operation of the system until Ordinance violations are corrected. The Town will refund the deposit to the aggrieved property owner.
  - b. Shadow Flicker Complaints for MWETs.
    - i. Notify the Town Zoning Officer in writing regarding concerns about the amount of shadow flicker.
    - ii. If the complaint is deemed sufficient by the Town Zoning Officer to warrant an investigation, the Town Zoning Officer will request the Owner(s) to provide a shadow flicker analysis of the turbine as constructed to determine compliance of the requirements of this Ordinance.
    - iii. If the MWET Owner(s) is in violation of the Ordinance shadow flicker requirements, the Owner(s) shall take immediate action to bring the MWET into compliance which may include ceasing operation of the WET until the Ordinance violations are corrected.

J. Certification & Compliance:

- a. The Town must be notified of a change in ownership of a MWET or a change in ownership of the property on which the MWET is located.
- b. The Town reserves the right to inspect any MWET, in order to ensure compliance with the Ordinance. Any cost associated with the inspections shall be paid by the owner/operator of the Wind Energy System.
- c. Proof of compliance with the noise standards is required within ninety (90) days of the date the MWET becomes operational. Sound shall be measured by a third-party, qualified professional.

**Section 8. Repeals.**

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

**Section 9. Severability.**

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 10. Effective Date.**

This Ordinance shall take effect upon passage and publication as provided by law.

Mayor Elvidge declared the hearing on Ordinance #2009-22 open to the public.

Mr. Neil Flaherty, 154 Sparta Avenue, suggested some corrections regarding Ordinance 2009-22 and was advised that the amendments would be made apart of the Ordinance prior to adoption.

There being no one else from the public to be heard, upon motion by Mrs. Becker, seconded by Mrs. Le Frois and carried, the hearing was closed.

The following **ORDINANCE** was offered, as amended, by Mr. Ricciardo, who moved its adoption, seconded by Mrs. Le Frois and roll call resulted as follows:

Mrs. Unhoch	Yes	Mrs. Becker	Yes
Mrs. Le Frois	Yes	Mr. Ricciardo	Yes
	Mayor Elvidge	Yes	

BE IT RESOLVED by the Town Council of the Town of Newton that the above Ordinance be adopted in its entirety according to law.

The Clerk will advertise the above Ordinance according to law.

Mayor Elvidge directed the Clerk to read aloud the following Ordinance relative to final adoption.

**ORDINANCE # 2009-24**

**AN ORDINANCE TO AMEND CHAPTER 10, TRAFFIC, OF THE REVISED GENERAL ORDINANCES.**

**WHEREAS**, there exists a Developer’s Agreement between the Town of Newton and Julie Richard, LLC (Developer) dated and executed January 8, 2007; and

**WHEREAS**, in accordance with Section I, Improvements, 1.1(1) Improvements to be Completed by the Developer, the Developer shall place “No Parking” signs along the unnamed road, and prepare the necessary documents to place “No Parking” signs along the unnamed road north side of Lot 1.04, in accordance with MUTCD; and

**WHEREAS**, the aforesaid unnamed road has been designated as and named “Railroad Avenue” by the adoption of Ordinance 2008-16 by the Newton Town Council at their meeting on July 28, 2008;

**NOW, THEREFORE BE IT ORDAINED**, by the Town Council of the Town of Newton, that Chapter 10 of the Revised General Ordinances be amended by the addition of the following language:

**Schedule I**

**NO PARKING**

<b><u>Street</u></b>	<b><u>Side</u></b>	<b><u>Location</u></b>
Railroad Avenue	Northwest	From the intersection of Sparta Ave, extending 150 feet along the north-west curb line

Mayor Elvidge opened the hearing to the public.

There being no one from the public to be heard, upon motion by Mr. Ricciardo, seconded by Mrs. Le Frois and carried, the hearing was closed.

The following **ORDINANCE** was offered by Mr. Ricciardo, who moved its adoption, seconded by Mrs. Le Frois and roll call resulted as follows:

Mrs. Unhoch	Yes	Mrs. Becker	Yes
Mrs. Le Frois	Yes	Mr. Ricciardo	Yes
	Mayor Elvidge	Yes	

BE IT RESOLVED by the Town Council of the Town of Newton that the above Ordinance be adopted in its entirety according to law.

The Clerk will advertise the above Ordinance according to law.

Mayor Elvidge directed the Clerk to read aloud the following Ordinance relative to final adoption.

**ORDINANCE # 2009-25**

**AN ORDINANCE ADOPTION OF A REVISED TOWN PERSONNEL POLICIES AND PROCEDURES MANUAL AND EMPLOYEE HANDBOOK**

**WHEREAS**, pursuant to Newton Revised General Ordinance 4-1 the Town Council of the Town of Newton is responsible for the generation of an employee personnel guide for employees of the Town of Newton in accord with the purposes declared in Subsection 4-1.1; and

**WHEREAS**, the Newton Town Manager, in consultation with his Department Heads and professional consultants, has completed a comprehensive review of the Town of Newton employee personnel guide, resulting in a new guide entitled "Town of Newton Personnel Policies and Procedures Manual and Employee Handbook," Revision Date September 2009, and has submitted said Guide to the Town Council for review and approval, a copy of which document is available for public review in the Office of the Town Clerk; and

**WHEREAS**, the Town Council desires to approve and adopt the aforesaid new employee personnel guide as in conformance with the purposes set forth in Code Subsection 4-1.1.

**NOW, THEREFORE, BE IT ORDAINED**, by the Town Council of the Town of Newton as follows:

1. The document entitled "Town of Newton Personnel Policies and Procedures Manual and Employee Handbook," Revision Date September 2009, is approved as the personnel guide for employees of the Town of Newton, and copies thereof are to be distributed to all present Town employees per Newton Code Section 4-1 and to all new employees henceforth.

2. This Ordinance shall take effect upon its passage and publication, as provided for by law.

Mayor Elvidge opened the hearing to the public.

There being no one from the public to be heard, upon motion by Mrs. Le Frois, seconded by Mrs. Becker and carried, the hearing was closed.

The following **ORDINANCE** was offered by Mrs. Le Frois, who moved its adoption, seconded by Mrs. Unhoch and roll call resulted as follows:

Mrs. Unhoch	Yes	Mrs. Becker	Yes
Mrs. Le Frois	Yes	Mr. Ricciardo	Yes
	Mayor Elvidge	Yes	

BE IT RESOLVED by the Town Council of the Town of Newton that the above Ordinance be adopted in its entirety according to law.

The Clerk will advertise the above Ordinance according to law.

Mr. Ricciardo commended Mr. Russo on his completion of the revised Employee Handbook which had not been updated in several years.

**OLD BUSINESS**

**RESOLUTION #181-2009**

**PERSON-TO-PERSON AND PLACE-TO-PLACE TRANSFER OF PLENARY RETAIL CONSUMPTION LICENSE NO. 1915-33-009-001**

Upon motion of Mr. Ricciardo, seconded by Mrs. Unhoch and carried, that Resolution 181-2009 be carried until after Executive Session is held and roll call resulted as follows:

Mrs. Unhoch	Yes	Mrs. Becker	Yes
Mrs. Le Frois	Yes	Mr. Ricciardo	Yes
	Mayor Elvidge	Yes	

**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.”

Councilwoman Le Frois noted that Resolution #184-2009 and Resolution #197-2009 are for both appointments to the Economic Development Advisory Commission, which stemmed from the two interviews held earlier this evening. Mrs. Le Frois noted that both applicants will be an asset to the Commission and thanked them for their volunteerism.

September 28, 2009

**RESOLUTION #183-2009\***

**AUTHORIZE THE SUBMISSION OF AN APPLICATION FOR THE ACTION ALLIANCE GRANT FOR CALENDAR YEAR 2010**

**WHEREAS**, the Town Council of the Town of Newton, County of Sussex, State of New Jersey recognizes that the abuse of alcohol and drugs is a serious problem in our society amongst persons of all ages; and

**WHEREAS**, the Newton Town Council further recognizes that it is incumbent upon not only public officials, but the entire community, to take action to prevent such abuses in our community; and

**WHEREAS**, the Newton Town Council has applied for funding to the Governor's Council on Alcoholism and Drug Abuse through the County of Sussex;

**NOW, THEREFORE BE IT RESOLVED**, that the Town Council of the Town of Newton hereby recognizes the following:

1. The Newton Town Council does hereby authorize the submission of an application for the Action Alliance grant for calendar year 2010 in the amount of \$18,772.
2. The Newton Town Council acknowledges the terms and conditions for administering the Municipal Alliance grant, including the administrative compliance and audit requirements.

**RESOLUTION #184-2009\***

**APPOINTMENT OF MELISSA LOGAN TO THE ECONOMIC DEVELOPMENT ADVISORY COMMISSION**

**WHEREAS**, there is currently a vacancy for a Regular Member of the Economic Development Advisory Commission; and

**WHEREAS**, Melissa Logan has expressed an interest in serving on the Commission;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that Melissa Logan is hereby appointed to the unexpired three-year term on the Economic Development Advisory Commission, effective immediately with said term continuing to December 31, 2009.

**RESOLUTION #185-2009\***

**AFFIRM THE REFUND OF MONIES FOR TAXES DUE TO A STATE TAX COURT JUDGMENT**

**WHEREAS**, M & M Spring Street, LLC, Block 717, Lot 33 also known as 123 Spring Street, filed a State Tax Court Appeal to lower the 2008 assessment on said block and lot; and

**WHEREAS**, on August 6, 2009 the Tax Office received the Judgment issued by the State Tax Court ordering a reduction in assessment for the tax year 2008. This order has resulted in a refund of monies in the total amount of \$ 2,426.00 for the tax year 2008; and

**WHEREAS**, the Tax Collector has issued a refund on September 15, 2009 in the amount of \$ 2,426.00 as not to exceed the statutory 60 day refund period;

**NOW, THEREFORE, BE IT RESOLVED**, by the Town Council of the Town of Newton that this Governing Body acknowledges this Judgment for M & M Spring Street, LLC and hereby affirms the refund in the amount of \$ 2,426.00.

September 28, 2009

**RESOLUTION #186-2009\***

**APPROVE FIREWORKS DISPLAY AT NEWTON MEMORIAL HOSPITAL**

**WHEREAS**, a Resolution of the Newton Governing Body is required by the New Jersey Department of Labor, Division of Workplace Standards, to grant permission for the public display of fireworks; and

**WHEREAS**, Zambelli Fireworks of New Castle, PA has submitted a proposal for a fireworks display with a copy of the permit application, certificate of insurance, a site diagram and other pertinent information, in conjunction with a fireworks display that will take place at Newton Memorial Hospital on Saturday, November 21, 2009 as part of the annual "Festival of Lights"; and

**WHEREAS**, Newton Fire Official Joseph C. Inga has advised that the application for said fireworks display is complete and in order;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that Newton Memorial Hospital is granted permission for a fireworks display during the "Festival of Lights" event to take place on November 21, 2009 and that said fireworks display will be provided by Zambelli Fireworks of New Castle, PA;

**BE IT FURTHER RESOLVED** that a certified original of this Resolution be forwarded to the New Jersey Department of Labor and Newton Fire Official Joseph C. Inga.

**RESOLUTION #187-2009\***

**RESOLUTION TO FORGIVE TAXES FOR BLOCK 716, LOT 23**

**WHEREAS**, BLD, LLC owns a certain property known as 20 Trinity Street, shown on the Newton Tax Map as Block 716, Lot 23; and

**WHEREAS**, Block 716, Lot 23 is being utilized by the Parking Authority of the Town of Newton and managed by said Parking Authority for public parking purposes under the Agreement between the Town of Newton and BLD, LLC; and

**WHEREAS**, Resolution #41-2003 adopted April 28, 2003 by the Governing Body of the Town of Newton states this property is tax exempt for the duration of the agreement; and

**WHEREAS**, the Town of Newton's Tax Assessor has stated that the property does not meet the guidelines for tax exemption and the taxes should be forgiven on an annual basis by the Tax Collector;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that this Governing Body acknowledges that taxes for the tax year 2009 for Block 716, Lot 23 also known as 20 Trinity Street be forgiven; and

**BE IT FURTHER RESOLVED** that the Tax Collector is hereby authorized to forgive said taxes for the tax year 2009 in the amount of \$738.97.

**RESOLUTION #188-2009\***

**RATIFY AND AFFIRM THE ISSUANCE OF BONDS THROUGH THE MCIA**

**WHEREAS**, in April 2009 the Town of Newton elected to pursue permanent financing through the Morris County Improvement Authority (MCIA) so as to utilize Morris County's Aaa rating and thereby effect an interest cost savings for the Town of Newton residents; and

**WHEREAS**, all the necessary resolutions and approvals, including the State Local Finance Board, were obtained; and

**WHEREAS**, the appropriate Town Officials executed said Bonds in the amount of \$4,285,000.00 dated September 16, 2009 with an interest and maturity schedule as per the attached *Bond Debt Service* Schedule with a final maturity date of 10/1/2023 and a NIC of 3.245524%; and

September 28, 2009

**WHEREAS**, to comply with N.J.S.A. 40A:2-28 of the Local Bond Law, which requires that the Chief Financial Officer report certain information in writing to the Mayor and Council at the next council meeting, herewith attached is a copy of the report (6 pages) on the sale, as prepared by RBC Capital Markets, the underwriters for the Bonds. Also attached is the September 16, 2009 letter from The Bank of New York Mellon, the Trustee for the bonds;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that we do hereby ratify and affirm the issuance of said Bonds by the Chief Financial Officer and the execution of said bonds by the appropriate Town Officials.

**RESOLUTION #189-2009\***

**PROVIDE EMERGENCY APPROPRIATION IN THE TOWN OF NEWTON  
2009 BUDGET**

**WHEREAS**, an emergency has arisen with respect to legal services and costs and no adequate provision was made in the 2009 budget for the aforesaid purpose; and

**WHEREAS**, N.J.S. 40A:4-48 provides for the creation of an emergency appropriation for the purpose above mentioned; and

**WHEREAS**, the total amount of emergency appropriation(s) created including the appropriation to be created by this resolution is \$40,000.00 and three percent (3%) of the total operations in the budget for the year is \$ 250,451.19;

**NOW, THEREFORE, BE IT RESOLVED**, by the Town Council of the Town of Newton (not less than two-thirds (2/3) of all the members thereof affirmatively concurring), that in accordance with the provisions of N.J.S. 40A:4-48 that:

- 1) An emergency appropriation be and the same is hereby made for in the amount of \$40,000.00.
- 2) Said emergency appropriation shall be provided in full in the 2010 budget.
- 3) The Chief Financial Officer has certified that the expenditures to be financed through this resolution are related to the aforementioned emergency.
- 4) Two (2) certified copies of this resolution be filed with the Director of the Division of Local Government Services.

**RESOLUTION #190-2009\***

**AUTHORIZE CREDITS DUE WATER AND SEWER UTILITY ACCOUNTS"**

**WHEREAS**, the Water and Sewer Collector has determined that the following Water and Sewer Utility Accounts are due credits for the reasons stated;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that the Water and Sewer Collector is hereby authorized to credit the following accounts for amounts billed incorrectly due to the reasons stated:

**Account's water was turned off – should not have been charged:**

<u>Account</u>	<u>Address</u>	<u>Amount</u>
240	130 Spring Street	\$75.00
265	134 Spring Street	\$75.00

**RESOLUTION #-191-2009\***

**AUTHORIZATION TO PROVIDE FOR THE PURCHASE OF ROAD SALT FOR THE  
DEPARTMENT OF PUBLIC WORKS FOR THE TOWN OF NEWTON**

**WHEREAS**, the County of Sussex advertised and received bids for road salt; and

September 28, 2009

**WHEREAS**, the bids received allowed for vendors to extend their pricing to municipalities within the County of Sussex through a State regulated County Contract Purchasing System Identification Number CK03-SXC; and

**WHEREAS**, the following vendor was awarded a contract for road salt and has extended their pricing to municipalities, thereby affording the Town of Newton the opportunity of direct purchase without competitive bidding:

1. Atlantic Salt, Inc., 134 Middle Street, Suite 210, Lowell, MA 01852

**WHEREAS**, the manufacturer has been awarded the County contract at the price of \$62.00 per tonnage of road salt, with such price good through May 2010.

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Newton does hereby award a contract for the purchase of road salt from Atlantic Salt, Inc., at the Sussex County price of \$62.00 per ton through May 2010; and

**BE IT FURTHER RESOLVED** that the Town of Newton does authorize the execution of the necessary purchase orders for Budget Year 2009 in the total amount of up to **\$10,000.00** by the Department of Public Works to permit the purchase of road salt as specified and priced to the County of Sussex; and

**BE IT FURTHER RESOLVED** that upon receipt, inspection and approval of vouchers therefore by the using agency, payment pursuant to said purchase orders is hereby authorized with the same to be charged against funds established in the appropriate accounts for said purpose in Budget Year 2009; and

**BE IT FURTHER RESOLVED** that purchases of road salt in Budget Year 2010 at the guaranteed price pursuant to this award will be as authorized by Resolution(s) to be enacted in 2010.

**RESOLUTION #192-2009\***

**AWARD BID FOR AUTOMATIC BRINE SYSTEM**

**WHEREAS**, the Town of Newton publicly opened and read bids for the Automatic Brine System on Wednesday, September 16, 2009 at 11:00am as follows:

<u>Name and Address of Bidder</u>	<u>Bid Price</u>
Timmerman Equipment Company 3554 Route 22 West PO Box 71 Whitehouse, NJ 08888	\$76,500.00

**WHEREAS**, the Town of Newton Purchasing Agent, Department of Public Works Supervisor for Newton, and the Department of Public Works Supervisor for Andover Township, recommend awarding the bid for the Automatic Brine System to Timmerman Equipment Company; and

**WHEREAS**, the Chief Financial Officer for the Town of Newton has certified that funds are available to support this project as per the attached certification;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that Timmerman Equipment Company, Whitehouse, NJ be awarded the bid for the Automatic Brine System in the amount of \$76,500.00.

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**RESOLUTION #193-2009\***

**AUTHORIZE AN INCREASE IN THE AGREEMENT WITH MWH AMERICAS, INC.  
FOR GENERAL CONSULTING SERVICES FOR THE NEWTON WATER AND  
SEWER UTILITY FOR 2009**

**WHEREAS**, the Town of Newton requires the services of a qualified Engineering Consultant for the Newton Water and Sewer Utility on an annual basis; and

**WHEREAS**, consulting service is a professional service as defined by the Local Public Contracts Law and is, therefore, exempt from public bidding requirements in accordance with N.J.A.C. 40A:11-5(1)(a)(i); and

**WHEREAS**, Resolution #1-2009, awarded a contract to MWH Americas, Inc. for general consulting engineering for the Newton Water and Sewer Utility in an amount not to exceed \$25,000; and

**WHEREAS**, there is a need to increase the original amount of the contract by an additional \$25,000 due to the renewal of the NJDEP permits for the Water and Wastewater Treatment Plants; and

**WHEREAS**, the Chief Financial Officer has certified that funds are available to support an agreement with MWH Americas, Inc. for General Consulting services in an amount not exceed an additional \$25,000 for calendar year 2009 through the Water and Sewer Utility Operating Budget;

**NOW, THEREFORE BE IT RESOLVED**, that the Town Council of the Town of Newton hereby authorizes an agreement with MWH Americas, Inc. for additional General Consulting services as outlined in their letter of July 27, 2009; and

**BE IT FURTHER RESOLVED**, that a certified copy of this resolution be forwarded to MWH Americas, Inc. and that a notice of this agreement be published in the newspaper of record in accordance with the Local Public Contracts Law.

**RESOLUTION #194-2009\***

**APPROVE CHANGE ORDER NO. 1 FOR THE PAVING OF VARIOUS STREETS  
PROJECT**

**WHEREAS**, the Town Council of the Town of Newton awarded a contract for the Paving of Various Streets Project to Tilcon New York, Inc., in the amount of \$404,398.14 by Resolution #140-2009, which was adopted on July 13, 2009; and

**WHEREAS**, Harold Pellow & Associates, Inc. has prepared Change Order No. 1 for said project and recommends approval of the following:

	<u>Amount</u>
<u>Supplemental &amp; Extra</u>	\$ 16,515.10
<u>Reductions</u>	<u>\$ (22,989.00)</u>
Total Change Order No. 1	\$ (6,473.90)

**WHEREAS**, the adjusted contract amount will be decreased by Change Order No. 1 to the new contract total of \$397,924.24;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that it hereby approves Change Order No. 1 for the Paving of Various Streets Project based on the recommendation of the Town Engineer, and that the Mayor is authorized to execute said Change Order No. 1 resulting in a new contract total of \$397,924.24;

**BE IT FURTHER RESOLVED** that a copy of the Engineer’s certification detailing the change order be attached and made part of this resolution.

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**RESOLUTION #195-2009\***

**AWARD BID FOR ALLEY SEWER REPLACEMENT PROJECT”**

**WHEREAS**, the Town of Newton publicly opened and read bids for the Alley Sewer Replacement Project on Thursday, September 24, 2009 at 11:00am as follows:

<b><u>Name and Address of Bidder</u></b>	<b><u>Bid Price</u></b>
Earth-Tec Associates, Inc. 57 Vernon Crossing Road Vernon, NJ 07462	\$ 72,758.00
DCM Contracting, LLC 171 Ridgedale Avenue Florham Park, NJ 07932	\$101,260.00
Montana Construction, Inc. 80 Contant Avenue Lodi, NJ 07644	\$146,823.00
U-Con Contracting 24 Perona Road Andover, NJ 07821	\$107,669.00
John Garcia Construction Co., Inc. 183 Friar Lane Clifton, NJ 07013	\$ 85,063.21

**WHEREAS**, the Town of Newton Engineer, Harold E. Pellow, recommends the award for the Alley Sewer Replacement Project to the low bidder, Earth-Tec Associates, Inc. in the amount of \$72,758.00; and

**WHEREAS**, the Chief Financial Officer has certified that funds are available to support the Alley Sewer Replacement Project, in the amount of \$72,758.00 through the 2008 Capital Budget;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that the Alley Sewer Replacement Project be awarded to Earth-Tec Associates, Inc., Vernon, New Jersey in the amount of \$72,758.00.

**RESOLUTION #196-2009\***

**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 2008 and 2009 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**

**CAPITAL**

50.00	Costco	25939
443.19	VOID	25940
53.86	Quill Corporation	25941
257.89	Harold Pellow & Assoc. Inc.	25942
986.43	NUI Corporation	25943
23.38	G & H Service, Inc.	25944
8,961.07	Jersey Central Power & Light	25945
286.04	New Jersey Herald	25946
175.50	Michael D. Teets	25947

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82.70	Township of Sparta	25948
2,561.10	EMBARQ	25949
47.97	EMBARQ	25950
2,319.48	Thea Unhoch	25951
258.92	Beaver Run Farms	25952
73.65	Campbell's Small Engine	25953
131.00	West Group	25954
37.50	Joseph Inga	25955
213.00	Thomas Trudgeon	25956
234.00	Scott Holzhauer	25957
50.00	State Treasurer	25958
6.00	Peter J. Kays	25959
20.00	Sussex County League of	25960
6.00	William F. Smith	25961
37.50	Brock Kithcart	25962
639.34	Sherwin-Williams	25963
41.96	Kenneth A. Teets	25964
271.50	Debra Millikin	25965
204.85	Limecrest Quarry (CEMEX)	25966
505.54	Boonton Tire Supply	25967
624.00	Weiner Lesniak	25968
912.97	Treasurer, State of New Jersey	25969
1,847.00	Rutgers Center for Government Serv.	25970
186.13	Verizon Wireless	25971
1,491.60	Verizon Wireless	25972
72.98	Mr. John	25973
1,272.91	Bobcat of North Jersey-West	25974
1,092.40	The Home Depot	25975
37.50	Tania L. Ell	25976
4.04	Paint Spot	25977
22.93	Staples Business Advantage	25978
11.90	Language Line Services	25979
60.42	Lowe's	25980
175.50	Katherine Citterbart	25981
20.00	Steve Estler	25982
3,571.13	Rachles/Michele's Oil Company	25983
2,000.00	Laddey, Clark & Ryan, LLP	25984
175.50	Derek J. Wechtler	25985
1,000.00	Thomas S. Russo, Jr.	25986
75.00	Joann Coan	25987
931.84	County of Sussex	25988
414.19	Family Ford, Inc.	25989
1,200.00	Sparctech Solutions,LLC	25990
80.30	Debra Carter	25991
887,294.00	Newton Board of Education	910070

**CAPITAL**

1,753.68	Quill Corporation	7399
19,984.72	Harold Pellow & Assoc., Inc.	7400
30.14	New Jersey Herald	7401
1,647.80	Weldon Asphalt Company	7402
17,279.00	New Jersey Fence & Guardrail	7403
265,952.15	Tilcon New Jersey	7404
1,343.80	The Phillips Companies	7405
26.22	The Home Depot	7406
540.00	A. Nelessen & Associates, Inc.	7407
6,513.00	FKA Architects	7408
9,875.00	Norris Sales Company	7409
4,939,575.00	Chase Bank	930017
1,653.71	Harold Pellow & Assoc., Inc.	1035
641.58	Harold Pellow & Assoc., Inc.	1036
1,628.00	Current Account	911012
4,542.73	Payroll Account	911013

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2,825.00 Payroll Account 911014

**Total TOWN BILLS \$6,198.921.95**

**WATER AND SEWER ACCOUNT**

50.26	Quill Corporation	10998
1,471.90	E S C Enterprises	10999
1,604.11	Harold Pellow & Assoc., Inc.	11000
1,294.45	Montgomery Watson Harza	11001
770.57	Hach Co.	11002
348.21	NUI Corporation	11003
1,035.57	Jersey Central Power & Light	11004
142.95	New Jersey Herald	11005
12.00	Paul Baldwin	11006
18.00	Paul M. Havens	11007
1,258.56	EMBARQ	11008
240.24	Beaver Run Farms	11009
680.00	Garden State Laboratories, Inc.	11010
26.00	Ervin Lasso	11011
250.00	Treasurer, State of New Jersey	11012
830.00	Rutgers Center for Government Serv.	11013
1,250.00	John Smalley	11014
270.23	The Home Depot	11015
13.52	Carquest	11016
420.00	Scarinci & Hollenbeck, LLC	11017
238.72	Staples Business Advantage	11018
1,249.42	Basic Chemical Solutions	11019
239.20	Accurate Waste Removal	11020
10,400.00	D2L Associates, Inc.	11021
228.00	EM Signs	11022
30.00	SC Office of Public Health Nursing	11023
28,717.49	Payroll Account	11024
493.85	State of New Jersey-PWT	11025

**CAPITAL**

2,333.64 Harold Pellow & Assoc., Inc. 2140

**Total WATER & SEWER BILLS \$55,916.89**

**TRUST ACCOUNT**

1,329.02	Harold Pellow & Assoc., Inc.	2689
1,440.73	Harold Pellow & Assoc., Inc.	2690
648.00	Hollander, Hontz, Hinkes & Pasculli LLC	2691
450.00	Daniel Colfax, Esq.	2692
390.00	Vogel, Chait, Collins, Schneider, PC	2693
1,125.00	Colleen Cunningham, Esq.	2694
2,493.42	JMC Environmental Consultants, Inc.	2695
4.00	Orchard Holdings, LLC	2696

**Total TRUST BILLS \$7,880.17**

**RESOLUTION #197-2009\***

**APPOINTMENT OF JOHN ZWAHL TO THE ECONOMIC DEVELOPMENT  
ADVISORY COMMISSION**

**WHEREAS**, there is currently a vacancy for a Regular Member of the Economic Development Advisory Commission; and

**WHEREAS**, John Zwahl has expressed an interest in serving on the Commission;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that John Zwahl is hereby appointed to the unexpired three-year term on the Economic Development Advisory Commission, effective immediately with said term continuing to December 31, 2011.

**Applications**

Application for an off-premise raffle (50-50) from the Pride Foundation, Inc., 44 Ryerson Avenue, Newton, to be held on December 17, 2009 at 8:00 a.m. at 44 Ryerson Avenue, Newton.

Application for off-premise raffle from Saint Joseph RC Church, 17 Elm Street, Newton, to be held on December 11, 2009 at 4:30 p.m. at 17 Elm Street, Newton.

A motion was made by Mrs. Becker to approve the **COMBINED ACTION RESOLUTIONS**, seconded by Mr. Ricciardo and roll call resulted as follows:

Mrs. Unhoch	Yes	Mrs. Becker	Yes
Mrs. Le Frois	Yes	Mr. Ricciardo	Yes
Mayor Elvidge	Yes		

**Intermission (10 minutes)**

**DISCUSSION (WORK SESSION)**

Mr. Russo read a Mayors Advisory which noted the importance of the 2010 Census. It was noted that the 2010 Census Awareness Committee is encouraging all municipalities to form a Complete Count Committee (CCC), whose primary focus is to promote the 2010 Census across all sectors of our community and ensure that every resident in the Town is counted. Mr. Russo outlined several members who should serve on the Committee and asked a member of the Council to serve as well. Mayor Elvidge indicated that he will serve.

Mr. Russo updated Council on the health benefit analysis performed through the North Jersey Municipal Employee Benefits Fund (NJMEBF). Mr. Russo listed the municipalities throughout the State who participate in the Fund and outlined the benefits for switching to the Fund from the current State Health Benefits Plan. Mr. Russo noted that the two key points are the initial savings of approximately \$30,000.00 yearly and the potential dividends that are provided at year end to the municipality. Mr. Russo requested support of this health benefit change prior to the implementation, which requires 60 days notification to the State of New Jersey. Mr. Russo is in receipt of a letter from NJMEBF which indicated that the health benefit coverage “would be equal to or better than the State Health Benefit coverage” provided on their website. After a brief discussion, the consensus of the Council was to move forward and have Mr. Russo address the staff and unions regarding the switch in health benefits. Mr. Russo noted that he would be meeting with the unions and all Town employees next week along with

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representatives of the Fund. The change in health benefits would become effective January 1, 2010.

**OPEN TO THE PUBLIC**

There was no public to be heard.

**COUNCIL & MANAGER COMMENTS**

The Town Council entered into Executive Session at 8:35 p.m.

The Town Council returned from Executive Session at 10:47 p.m.

Upon motion of Mr. Ricciardo, seconded by Mrs. Le Frois and carried, that Resolution #181-2009 be placed back on the table this evening.

Mayor Elvidge requested a motion on a Person-to-Person and Place-to-Place Transfer of Plenary Retail Consumption License No. 1915-33-009-001. Upon motion of Mrs. Le Frois, seconded by Mrs. Unhoch and roll call resulted as follows:

Mrs. Unhoch	Yes	Mrs. Becker	Yes
Mrs. Le Frois	Yes	Mr. Ricciardo	Yes
Mayor Elvidge		Yes	

There being no further business to be conducted, upon motion of Mrs. Le Frois, seconded by Mr. Ricciardo and unanimously carried, the meeting was adjourned at 10:48 p.m.

Respectfully submitted,

Lorraine A. Read, RMC  
Municipal Clerk