

January 26, 2009

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 Mr. Elvidge, Mrs. Unhoch, Mrs. Becker, Mrs. Le Frois Mayor Ricciardo and Town Manager, Tom Russo, Jr.

Mayor Ricciardo 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 Ricciardo led all present in an Invocation and the Pledge of Allegiance to the flag. The Clerk called the roll and upon completion of same, upon motion made by Mrs. Becker, seconded by Mrs. Le Frois and carried that the minutes of November 17, 2008 (Special) and November 24, 2008 (Regular) were approved.

Prior to the opening the meeting to the public. Mr. Mark Hontz, Esq., Town Attorney, made a presentation, regarding his eleven (11) page legal opinion on the “recitation of the Lord’s Prayer at Council Meetings”.

Mr. Hontz, Esq., made a lengthy presentation and outlined the texts of the Lord’s Prayer and the First Amendment. Mr. Hontz reviewed several existing legal guidelines to analyze the propriety of the Newton Town Council’s use of the Lord’s Prayer at its meetings. Mr. Hontz further provided sample “invocation” submitted by Metuchen Council. Mr. Hontz added that if the Newton Town Council is determined to retain some manner of “invocation” at its Council meetings, it: (1) may not, by established practice, be the Lord’s Prayer; and (2) must be fashioned according to the analyses set forth in his legal opinion. Mayor Ricciardo advised that Council will discuss this matter in executive session this evening.

January 26, 2009

OPEN TO THE PUBLIC

Mayor Ricciardo open the meeting to the public.

Mr. Joseph Kocur, 29 Hamilton Street, indicated he disagrees with some statements of Mr. Hontz. “You may pray, but not in show”, Mr. Kocur concluded.

Mr. Bader G. Qarmout, 267 Spring Street, Newton, handed out a three (3) page letter outlining his views on the issue of the Lord’s Prayer at Council meetings. After a brief discussion, Mr. Qarmout implored the Council “not to change or alter the longstanding “tradition” that we have come to expect and love”.

Mr. Santo Milici, 11 Moran Street, suggested that perhaps the Council could recite the Lord’s Prayer outside of the Chambers, thereby not violating the First Amendment.

Several residents of the Town of Newton expressed their support of keeping the “Lord’s Prayer” at the Council meetings and not altering same.

Mrs. Sandra Diglio, 5 Paterson Place, speaking on behalf of the herself and her husband, former Newton Mayor and Councilman, also requested that the Town Council stand their ground and not eliminate “this prayer from the Council meetings”.

Mrs. Karen Kitchel-Hardin, expressed concern with the Acme Market closing on West Nelson Street. She works with the elderly, who are extremely upset with the loss of this business. “Please do not let it go vacant”, Mrs. Kitchel-Hardin concluded.

Mr. Neil Flaherty, 154 Sparta Avenue, “I do not believe that we should start with the Lord’s Prayer”, because it does violate not only the First Amendment, also the Article Six of the Constitution. Having said the Lord’s

January 26, 2009

Prayer for many years, as tradition, “does not pass Constitutional muster”, Mr. Flaherty concluded.

There being no one else to come before the Council, Mayor Ricciardo closed the public portion of the meeting.

Council & Manager Reports

Councilwoman Becker expressed her condolences to Erma Green Family for their loss. Mrs. Green was a long standing business woman of this community and will sorely be missed.

Mayor Ricciardo expressed his personnel believes that there is a need for guidance and is not questioning the “Prayer” but the legality of the issue. Council will discuss this matter and will make decision by the next Council meeting. “Thank you all for your input, it is greatly valued”.

Councilman Elvidge added that this controversial issue has not been decided as of yet, by the Town Council.

ORDINANCES

Mayor Ricciardo directed the Clerk to read aloud the following ordinance relative to final adoption.

ORDINANCE #2009-1

AN ORDINANCE TO AMEND CHAPTER 2, ADMINISTRATIVE CODE OF THE REVISED GENERAL ORDINANCES OF THE TOWN OF NEWTON.

BE IT ORDAINED by the Town Council of the Town of Newton that **Chapter 2, Section 2-7.2 Purchasing Procedures** be amended to read as follows:

Section 2-7.2 Purchasing Procedures

- a. Purchasing Agent.** Within the Department of Administration, there shall be a division of purchasing pursuant to N.J.S.A. 40A:11-9, the head of the division shall be the Town Purchasing Agent with the authority, responsibility, and accountability for the purchasing activity, to prepare public advertising for bids and to receive bids for the provision or performance of goods or services

January 26, 2009

and to award contracts permitted pursuant to N.J.S.A. 40A:11-9(a).

- b. Purchase Controls.** Purchases shall be authorized only upon the requisition of a department head, which requisition shall be made to the Manager and Purchasing Agent at such times and in such form as the Manager or Purchasing Agent may prescribe or approve. All purchases made and contracts awarded for any supplies, materials or equipment or contractual services shall be pursuant to a written requisition from the head of the department against which the appropriation will be charged and the certification of the treasurer that a sufficient balance of appropriation is available to pay therefor. All such purchase contracts in excess of two thousand five hundred (\$2,500.00) dollars shall conform with the applicable requirements of state statutes for competitive bidding. Except as the Manager may specifically authorize in case of emergency, no purchase shall be made and no bill, claim or voucher shall be approved unless the procedures prescribed by or pursuant to the administrative code have been followed. The Purchasing Agent and the Manager may, at their option, in cases where competitive bidding is not required, submit a proposed purchase to competitive bidding, open the bids obtained and award contracts.
- c. Award of Contracts; Execution.** Where contracts are by law required to be let to competitive public bidding, the council may, upon recommendation of the Manager, let the contract in the manner prescribed by law. The Mayor or, in the event of his inability to act, such Councilman as the Town Council shall designate to act as Mayor during his absence or disability, shall execute and sign contracts let and authorized pursuant to the charter and ordinances, and their respective signatures shall be attested by the Clerk.
- d. Standards and Tests.** The Purchasing Agent shall establish and approve uniform standards for requisitions and purchases; shall control the delivery of all supplies, materials and equipment and other items purchased, and shall make or cause to be made proper test checks and inspections thereof. The Purchasing Agent shall ascertain whether the supplies, materials, equipment and other items purchased comply with specifications and shall cause laboratory or other tests to be made whenever in the Purchasing Agent's or Manager's opinion is necessary to determine whether the materials or supplies furnished are of the quality and standard required, and shall accept or reject deliveries in accordance with the results of the Purchasing Agent's inspection.
- e. Storerooms.** The Purchasing Agent shall control any general storerooms or stock rooms which the council may authorize. The Purchasing Agent may take transfers of supplies, materials and equipment between departments, officers and agencies; sell surplus, obsolete, unused or waste supplies, materials and equipment; and make any other sales authorized by the Council.

January 26, 2009

Mayor Ricciardo declared the hearing on Ordinance #2009-1 open to the public.

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

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

Mr. Elvidge	Yes	Mrs. Unhoch	Yes
Mrs. Becker	Yes	Mrs. Le Frois	Yes
Mayor Ricciardo	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 Ricciardo directed the Clerk to read aloud the following ordinance relative to final adoption.

ORDINANCE #2009-2

AN ORDINANCE ESTABLISHING SPEED LIMITS FOR BOTH DIRECTIONS OF TRAFFIC ALONG SUSSEX COUNTY ROUTE 621.

WHEREAS, the Mayor and Council of the Town of Newton finds it in the interest of public safety to establish speed limits for both directions of traffic along Sussex County Route 621 pursuant to N.J.S.A. 39:4-8;

WHEREAS, the County Engineer will submit and certify all the legislative requirements pursuant to N.J.S.A. 39:4-8 and the criteria as set for by the New Jersey Department of Transportation, Bureau of Traffic Engineering and Investigations will be met;

NOW, THEREFORE BE IT ORDAINED, by the Mayor and Council of the Town of Newton in the County of Sussex and in the State of New Jersey, that speed limits for both directions of traffic along Sussex County Route 621, shall be established pursuant to N.J.S.A. 39:4-8 under the County Engineer's Certification, Seal and License Number 21399 as follows:

Along Sussex County Route 621 for both directions of traffic:

January 26, 2009

Zone 1: 25 miles per hour between Sparta Avenue, a.k.a. County Route 616 and Main Street, a.k.a State Route 206.

Penalties: Every person convicted of a violation of any provision of this Ordinance or any supplement thereto shall be subject to penalty or imprisonment as expressly provided for by New Jersey Statute.

All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed and this Ordinance shall take effect upon approval of a concurring resolution by the Sussex County Board of Chosen Freeholders in accordance with 39:4-197.2.

Mayor Ricciardo declared the hearing on Ordinance #2009-2 open 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 Mr. Elvidge and roll call resulted as follows:

Mr. Elvidge	Yes	Mrs. Unhoch	Yes
Mrs. Becker	Yes	Mrs. Le Frois	Yes
	Mayor Ricciardo	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 Ricciardo directed the Clerk to read aloud the following Ordinance relative to final adoption.

ORDINANCE #2009-3

AN ORDINANCE ESTABLISHING SPEED LIMITS FOR BOTH DIRECTIONS OF TRAFFIC ALONG SUSSEX COUNTY ROUTE 616.

WHEREAS, the Mayor and Council of the Town of Newton finds it in the interest of public safety to establish speed limits for both directions of traffic along Sussex County Route 616 pursuant to N.J.S.A. 39:4-8;

WHEREAS, the County Engineer will submit and certify all the legislative requirements pursuant to N.J.S.A. 39:4-8 and the criteria as set

January 26, 2009

for by the New Jersey Department of Transportation, Bureau of Traffic Engineering and Investigations will be met;

NOW, THEREFORE BE IT ORDAINED, by the Mayor and Council of the Town of Newton in the County of Sussex and in the State of New Jersey, that speed limits for both directions of traffic along Sussex County Route 616, shall be established pursuant to N.J.S.A. 39:4-8 under the County Engineer’s Certification, Seal and License Number 21399 as follows:

Along Sussex County Route 616 for both directions of traffic:

Zone 1: 25 miles per hour from Halstead Street and Orchard Street,

Zone 2: 30 miles per hour between Orchard Street and the municipal boundary of the Town of Newton and Andover Township

Penalties: Every person convicted of a violation of any provision of this Ordinance or any supplement thereto shall be subject to penalty or imprisonment as expressly provided for by New Jersey Statute.

All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed and this Ordinance shall take effect upon approval of a concurring resolution by the Sussex County Board of Chosen Freeholders in accordance with 39:4-197.2.

Mayor Ricciardo declared the hearing on Ordinance #2009-3 open to the public.

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

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

Mr. Elvidge	Yes	Mrs. Unhoch	Yes
Mrs. Becker	Yes	Mrs. Le Frois	Yes
Mayor Ricciardo	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 Ricciardo directed the Clerk to read aloud the following Ordinance relative to introduction of same.

ORDINANCE #2009-4

January 26, 2009

AN ORDINANCE TO EXCEED THE 2008 MUNICIPAL BUDGET APPROPRIATION LIMITS TO ESTABLISH A CAP BANK (N.J.S.A. 40a:4-45.14).

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

Mr. Elvidge	Yes	Mrs. Unhoch	Yes
Mrs. Becker	Yes	Mrs. Le Frois	Yes
Mayor Ricciardo	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 February 9, 2009.

The Clerk will advertise the above Ordinance according to law.

OLD BUSINESS

Mayor Ricciardo advised that Resolution #10-2009 is currently on the table and will remain on the table at this time. Mr. Russo advised that information is still be acquired by other banking institutions and a memo will be forwarded to Council with all information requested.

CONSENT AGENDA

Mayor Ricciardo 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.”*

RESOLUTION #14-2009*

Appointment of Andrew A. Fraser, Esq., as the Town of Newton’s Alternate Municipal Prosecutor for the Calendar Year 2009

WHEREAS, Victor R. Jusino, Esq. is currently serving as the Town of Newton’s Municipal and Prosecutor, has indicated that an Alternate Municipal Prosecutor may be needed by the Town of Newton during calendar year 2009, and

January 26, 2009

WHEREAS, Andrew A. Fraser Esq., an associate in Mr. Jusino's office has expressed an interest in serving as Newton's Alternate Municipal Prosecutor, and

WHEREAS, compensation for said services will be the sole responsibility of Victor R. Jusino, Esq., and

WHEREAS, legal services 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);

NOW THEREFORE BE IT RESOLVED by the Town Council of the Town of Newton that it hereby appoints Andrew A. Fraser, Esq. as the Town of Newton's Alternate Municipal Prosecutor for the calendar year 2009.

BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded to Andrew A. Fraser, Esq., Victor R. Jusino, Esq., David J. Weaver, Sussex County Prosecutor and Municipal Judge John E. Mulhern.

RESOLUTION #15-2009*

Resolution Authorizing an Agreement Between the Town of Newton, the State of New Jersey, and Main Street Newton, Inc. to Implement the Main Street New Jersey Community Program within the Town of Newton

WHEREAS, the Town of Newton endorsed the concept of establishing a Main Street New Jersey Program within the Town of Newton by Resolution # 5-2007 dated January 8, 2007, and

WHEREAS, by the above-stated Resolution #5-2007, the Town of Newton agreed to provide financial support for a period of four years to Main Street Newton subject to successful application and designation as a Main Street New Jersey Community, and

WHEREAS, on January 23, 2008, Main Street Newton was officially designated as a traditional Main Street New Jersey Community by the Commissioner of the State of New Jersey, and

WHEREAS, as a requirement of designation as a Main Street New Jersey Community, the Town of Newton must enter into a formal agreement with the State of New Jersey and Main Street Newton to solidify the partnership for the development and financial support of said Main Street Newton organization;

NOW THEREFORE BE IT RESOLVED by the Town Council of the Town of Newton that in support of the Main Street Newton Program, we hereby authorize the Mayor to sign an Agreement between the New Jersey Department of Community Affairs, the Town of Newton and Main Street Newton, Inc. to signify the partnership between all parties;

January 26, 2009

BE IT FURTHER RESOLVED that said Agreement be attached to and made a part of this resolution.

RESOLUTION #16-2009*

Approval of Application for an Initial Taxicab Driver's License

WHEREAS, the Newton General Revised Ordinances require that under **9-2, License Required**. "No person shall operate a taxicab within the town unless both the owner and the driver of the taxicab are licensed under this chapter." "All licenses issued under this chapter are deemed valid for one (1) year and requests for renewal must be submitted at least thirty (30) days prior to expiration to the chief of police"., and

WHEREAS, the Newton Police Department has completed the necessary investigation and submitted a letter advising that the initial Taxicab Driver's license application is complete and accurate;

NOW THEREFORE BE IT RESOLVED by the Town Council of the Town of Newton that it hereby approves the application for the initial Taxicab Driver's License submitted by Joseph Guerriero, 10 Old Swartswood Station Road, Newton, New Jersey which expires on January 26, 2010.

RESOLUTION #17-2009*

Approve 2009 Appropriation Reserve Transfers

BE IT RESOLVED by the Town Council of the Town of Newton that the following 2008 appropriation reserve transfers be approved effective this date:

<u>From</u>	<u>To</u>	<u>Amount</u>
Community Development SW 1064101A	Planning Board OE 1062216A	\$ 1,100.

RESOLUTION #18-2009*

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.

WATER AND SEWER ACCOUNT

25,269.03	Payroll Account	960001
50.00	Water & Sewer Petty Cash Fund	10552

January 26, 2009

25,352.55	Payroll Account	960002
125.88	Staples Credit Plan	10553
8,820.20	Harold Pellow & Assoc., Inc.	10554
18.00	Paul Baldwin	10555
26.00	Paul M. Havens	10556
7,465.04	Coyne Chemical Corp., Inc.	10557
210.00	Hollander,Hontz,Hinkes&Pasculli LLC	10558
12,115.95	Current Account	10559
101.63	Airgas	10560
32.00	Ervin Lasso	10561
1,250.00	John Smalley	10562
160.49	Dan's Auto	10563
3,872.55	Payroll Account	10564

CAPITAL

3,309.74	Harold Pellow & Assoc., Inc.	2126
52.50	Hollander,Hontz,Hinkes&Pasculli LLC	2127
4,748.09	McManimon & Scotland	2128

Total WATER & SEWER BILLS \$92,979.65

TRUST ACCOUNT

2,338.50	Payroll Account	971001
3,176.80	Payroll Account	971002
16,246.39	Harold Pellow & Assoc., Inc.	2594
1,907.11	Harold Pellow & Assoc., Inc.	2595
980.00	Hollander,Hontz,Hinkes&Pasculli LLC	2596
464.00	Weiner Lesniak	2597
76.35	BLD. LLC	2598
1,020.00	Vogel,Chait,Collins,Schneider,PC	2599
2.50	Bowens Bluelines	2600
150.00	Christopher Colabella, Esq.	2601

Total TRUST BILLS \$26,361.65

DOG RESERVE

12,650.00	Township of Wantage	8499
-----------	---------------------	------

Total DOG RESERVE BILLS \$12,650.00

The Clerk presented an Application for an on-premise raffle (Tricky Tray) from Literacy Volunteers of Sussex County, 61 High Street, Newton to be held on February 28, 2009 from 2:00 p.m. to 4:00 p.m. at Sussex County Community College, One High Street, Newton. It was noted that the application was in order and accompanied by the prescribed fees.

January 26, 2009

A motion was made by Mrs. Le Frois to approve the **COMBINED ACTION RESOLUTIONS**, which was seconded by Mrs. Unhoch and carried and roll call resulted as follows:

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

Intermission (10 minutes)
DISCUSSION (WORK SESSION)

A. Spring Street Traffic Study

At Council's request, Mr. Russo asked Mr. Pellow to present the traffic study for Spring Street which was presented in 2005.

Mr. Harold Pellow, P.E, L.S., Town Engineer, made a presentation of the Spring Street Traffic Studies. When our office met with NJDOT, back in 2005, there were required modifications of Spring Street in order to accommodate the one-way traffic direction. NJDOT would require additional traffic studies and a major access permit. After a brief discussion, Council agreed that the origin and destination study should be completed, at this time, there is no money in the budget. Mayor Ricciardo concluded that Council will try to include funds in this budget for this traffic study.

B. Water Allocation Program

Mrs. Millikin, Deputy Town Manager, outlined, at Council's request, a time line schedule for the unaccounted for water in the Town of Newton. The key reason for this time line, is that the Town may not apply for our water allocation increase until such time as the Town shows no more than a fifteen (15%) percent of our unaccounted water. Mrs. Millikin has implemented new procedures which will continue each month in order to be proactive and obtain the "goal" of unaccounted water.

January 26, 2009

OPEN TO THE PUBLIC

Mr. Anwar Qarmout, 45 Woodside Ave., congratulated the Town for preparing a water study, which will assist in the conservation of water.

Mr. Neil Flaherty, 154 Sparta Avenue, questioned the public hearing dates for the Town budget hearings and was advised of the two hearing dates.

There being no one else to come before the Council, Mayor Ricciardo closed the public portion of the meeting.

COUNCIL & MANAGER COMMENTS

Councilwoman Becker inquired if the DPW would be removing snow from Spring Street and Mr. Russo will check with Mr. Jaekel, Director of Public Works.

At this time, upon motion of Mrs. Le Frois, seconded by Mrs. Becker and carried, the Town Council went into Executive Session at 10:14 p.m.

EXECUTIVE SESSION

WHEREAS, the Town Council of the Town of Newton (hereinafter referred to as the “Town Council”), convened a meeting in full compliance with the New Jersey Open Public Meetings Act, set forth in N.J.S.A. 10:4-12, and

WHEREAS, N.J.S.A. 10:4-12 allows a public body to enter executive session during a public meeting to discuss certain matters, and

WHEREAS, it has become clear to the Town Council that there is a need to enter executive session to discuss one or more of the exceptions to the New Jersey Open Public Meetings Act, as set forth in N.J.S.A. 10:4-12, and

NOW THEREFORE BE IT RESOLVED by the Town Council of the Town of Newton that it will enter executive session to discuss issues related to potential litigation.

POTENTIAL LITIGATION

Mr. Mark Hontz, Esq., reviewed the legal avenues regarding reciting prayer at Council meetings. The consensus, among the Council, was to

January 26, 2009

invite the higher powers from diverse and different faiths each week to provide an invocation at each Council meeting.

Upon motion of Mrs. Le Frois, seconded by Mrs. Becker and carried, the Council exited Executive Session at 10:47 p.m.

The Council directed Mr. Russo to draft a letter to all the area clergy, inviting them to offer an invocation at the beginning of its Town Council meetings.

There was no further business to conduct, upon motion of Mrs. Unhoch, seconded by Mrs. Le Frois and carried, the meeting was adjourned at 10:48 p.m.

Respectfully submitted,

Lorraine A. Read, RMC
Municipal Clerk