

TOWNSHIP COMMITTEE MEETING
September 22, 2008

The regular meeting of the Township Committee of the Township of Cranbury was held at 7:00 p.m. in the Town Hall Meeting Room. Answering present to the roll call were: Township Committee members: Pari Stave, Wayne Wittman and Mayor David J. Stout. Messrs. Panconi and Stannard were absent. Also present were: Trishka Waterbury, Esquire, Attorney, Cathleen Marcelli, Engineer and Kathleen R. Cunningham, Clerk. Mayor Stout led in the salute to the flag and Ms. Cunningham gave the following Open Public Meetings Act statement:

In accordance with Section 5 of the Open Public Meetings Act, it is hereby announced and shall be entered into the minutes of this meeting that adequate notice of this meeting has been provided:

- (1) Posted on December 3, 2007 on the Bulletin Board of the Municipal Office at 23-A North Main Street, Cranbury, New Jersey and remains posted at that location.
- (2) Communicated to the Cranbury Press, Home News Tribune and Trenton Times on December 3, 2007.
- (3) Was filed on December 3, 2007 at the Cranbury Municipal Office, 23-A North Main Street, Cranbury, New Jersey, posted on the Township's web site and remains on file for public inspection, and
- (4) Sent to those individuals who have requested personal notice.

Special Township Committee Meeting Minutes of September 11, 2008

On motion by Ms. Stave, seconded by Mr. Wittman and unanimously carried, the Special Township Committee Minutes of September 11, 2008 were adopted.

Closed Session Minutes of September 11, 2008

On motion by Ms. Stave, seconded by Mr. Wittman and unanimously carried, the Closed Session Minutes of September 11, 2008 were adopted.

Regular Township Committee Meeting Minutes of September 8, 2008

On motion by Ms. Stave, seconded by Mr. Wittman and unanimously carried, the Regular Township Committee Meeting Minutes of September 8, 2008 were adopted.

Reports and Communications

--Mayor

Mayor Stout reported, according to the Police Blotter released today, there was an attempted break-in during daylight hours on Plainsboro Road. The residents were home at the time. Mayor Stout urged residents to be aware of their surroundings and look out for their neighbors as well.

Mayor Stout reported the Township has prepared a survey of a portion of the West Property which lies north of the access driveway and a survey has been done. The lot under consideration is a little over two (2) acres. The Township is presently looking at the possibility of carving out that portion for purposes other than the Cranbury Brook Preserve and that dialogue continues.

Mayor Stout gave an update on the Babe Ruth Baseball Field which is being built on the Wright-South property: Some members of The Recreation Commission had visited the site last week. The Township Committee had passed a Resolution to correct a problem with the fence. Mayor Stout thanked the Recreation Commission for coming up with a better plan which will allow the Township to rescind the Resolution it had passed. The Recreation

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Reports and Communications (Continued)

--Mayor (cont'd)

Commission has indicated they are willing to work with Public Works to come up with a better solution for the taxpayers and the Field in the long run.

Members of Committee

--Ms. Stave

Ms. Stave reported she had just spoken with Mr. Wittman, Liaison to the Township Committee for the Recreation Commission; she requested she take over in that role in order to help with the Baseball Field design. Mr. Wittman's term will be ending on December 31, 2008 and the project will most likely go beyond that date. Mr. Wittman acknowledged he is fine with Ms. Stave being the Liaison.

Ms. Stave also reported she and Mayor Stout had received an e-mail from the Library asking to have a meeting with the Township Planner. Ms. Stave requested she be allowed, with Mayor Stout's permission, to set the meeting up. Mayor Stout agreed.

Ms. Stave stated she had been speaking to someone on the Environmental Commission concerning the trees along the ridge of the Brainerd Dam having to come down. The Environmental Commission was never informed and would now like to discuss and study the issue at their next meeting.

Ms. Stave commended Mr. Mike Kaiser, Kaiser Construction, on the recent new floor he installed in the Boy Scout Room.

Agenda Additions/Changes

Ms. Cunningham, Clerk, reported Item # 12, Closed Session Resolution # R 09-08-173 was not going to be considered this evening as there is no longer a need to go into Closed Session.

Resolutions

Consent Agenda

On motion offered by Mr. Wittman, seconded by Ms. Stave, the following Consent Agenda Resolutions were adopted by vote:

Ayes: (Panconi
(Stave
(Stout
(Wittman

Abstain: (None
Absent: (Panconi & Stannard

Nays: (None

Cranbury Township Resolution # R 09-08-168

**RESOLUTION PROVIDING FOR THE INSERTION OF A SPECIAL ITEM OF REVENUE IN THE
MUNICIPAL BUDGET OF THE TOWNSHIP OF CRANBURY PURSUANT TO N.J.S.A. 40A:4-
87 (CHAPTER 159, P.L. 1948)**

WHEREAS, N.J.S.A. 40A: 4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the budget of any County or Municipality when such item shall have been made available by law and the amount thereof was not determined at the time of the adoption of the budget, and

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Cranbury Township Resolution # R 09-08-168
(Continued)

WHEREAS, said Director may also approve the insertion of an item of appropriation for equal amount,

Section 1

NOW, THEREFORE, BE IT RESOLVED that the Township Committee hereby requests the Director of the Division of Local Government Services to approve the insertion of an item of

revenue in the budget of the year 2008 in the sum of \$16,117.35 which item is now available as a revenue from the State of New Jersey pursuant to the provision of statute, and

Section 2

BE IT FURTHER RESOLVED that a like sum of \$16,117.35 is hereby appropriated under the caption Recycling Tonnage Grant FY 2008/2009.

Section 3

BE IT FURTHER RESOLVED that a copy of the Resolution, certified by the Township Clerk to be a true copy forwarded to each of the following:

- (a) Director of the Division of Local Government Services
- (b) Township Auditor
- (c) Township Chief Financial Officer

Cranbury Township Resolution # R 09-08-169

RESOLUTION OF THE TOWNSHIP OF CRANBURY, NJ

A RESOLUTION AUTHORIZING THE RELEASE OF EXTRA DUTY ESCROW

WHEREAS, the Underground Services has outstanding credits in their Extra Duty escrow account previously posted with the Township.

WHEREAS, the Police Department has no outstanding bills.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Cranbury that the Township of Cranbury release outstanding credits in Underground Services' extra duty escrow account.

BE IT FUTHER RESOLVED that a copy of this Resolution, certified by the Township Clerk to be a true copy forwarded to each of the following:

- (a) Township Chief Financial Officer
- (b) Underground Services, Linda Fitzgerald

Cranbury Township Resolution # R 09-08-170

RESOLUTION OF THE TOWNSHIP OF CRANBURY, NJ

A RESOLUTION AUTHORIZING THE RELEASE OF A PERFORMANCE GUARANTEE FOR
KERZNER BL 2.01 LOT 3.01

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Cranbury Township Resolution # R 09-08-170
(Continued)

WHEREAS, by letter dated July 28, 2008, Kerzner Associates has requested the release of their performance guarantee previously posted with the Township in accordance with Planning Board approval; and

WHEREAS, the Township Engineer has, in a letter dated September 10, 2006 (attached hereto as "Exhibit A") recommended that the following performance guarantee be released:

Performance Bond	\$ 179,843.33
Cash	\$ 19,982.59

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Cranbury as follows:

1. It has reviewed, agrees with and hereby accepts all recommendations of the Township Engineer as set forth in "Exhibit A".
2. It hereby authorizes the release of performance guarantees set forth in the Township Engineer's letter referenced above.
3. The Township hereby accepts the public improvements, if any so designated pursuant to the Planning Board's approval.

BE IT FURTHER RESOLVED that a copy of this Resolution, certified by the Township Clerk to be a true copy and forwarded to each of the following:

- (a) Township Engineer
- (b) Township Chief Financial Officer
- (c) Kerzner Associates
- (d) Township Attorney

Cranbury Township Resolution # R 09-08-171

RESOLUTION OF THE TOWNSHIP OF CRANBURY, NJ

A RESOLUTION AUTHORIZING THE RELEASE OF A PERFORMANCE GUARANTEE FOR
GENTLE HEALING WELLNESS - PUBLIC

WHEREAS, by letter dated August 6, 2008, Gentle Healing Wellness has requested the release of their performance guarantee previously posted with the Township in accordance with Planning Board approval and

WHEREAS, the Township Engineer has, in a letter dated September 10, 2006 (attached hereto as "Exhibit A") recommended that the following performance guarantee be released:

Performance Bond	\$ 28,274.40
Cash	\$ 3,141.60

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Cranbury as follows:

1. It has reviewed, agrees with and hereby accepts all recommendations of the Township Engineer as set forth in "Exhibit A".
2. It hereby authorizes the release of performance guarantees set forth in the Township Engineer's letter referenced above.

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Cranbury Township Resolution # R 09-08-171
(Continued)

3. The Township hereby accepts the public improvements, if any so designated pursuant to the Planning Board's approval.

BE IT FURTHER RESOLVED that a copy of this Resolution, certified by the Township Clerk to be a true copy and forwarded to each of the following:

- a. Township Engineer
- b. Township Chief Financial Officer
- c. Gentle Healing Wellness
- d. Township Attorney

Cranbury Township Resolution # R 09-08-172

TOWNSHIP OF CRANBURY
COUNTY OF MIDDLESEX

WHEREAS, on June 24, 2002, Cranbury Township (Resolution # R 06-002-105) entered into an Inter-local Agreement with Monroe Township Municipal Utilities Authority to provide all regular and emergency maintenance for the Township of Cranbury's Sewer System; and

WHEREAS, the Monroe Township Utilities Authority has increased their taxes by \$5,511 or 3.5% annually;

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Cranbury this rate increase is hereby approved.

Reports from Township Staff and Professionals
There were no reports.

Reports from Township Boards and Commissions
There were no reports.

Work Session

a). Discussion of Volunteer Service Project Application

The Township Committee reviewed and discussed with Mr. Will Rogers his Volunteer Service Project application for his Eagle Scout designation. Mr. Rogers explained his project would be to install a kiosk and bench at The Cranbury Brook Preserve similar to the kiosk at the entrance to the Preserve which is on North Main Street. Mayor Stout asked what type of shingles were going to be used and recommended using cedar. Mayor Stout asked that processed wood and asphalt not be used and suggested Mr. Rogers consult with the Environmental Commission on the exact location where the kiosk and bench will be located. Mr. Rogers added he is proposing the bench be placed directly across from the kiosk. Mr. Rogers indicated he will be conducting research on various animals and grasses at The Preserve. That information will be placed in the kiosk. Mr. Rogers indicated he will be holding work sessions on the project in October and then starting the work in November. In December he will give his final report. Mayor Stout recommended contacting the U.S. Department of Agriculture's Natural Resources Conservation Services who planted the various grasses at the site to get input from them when conducting his research.

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Work Session (Continued)

a). Discussion of Volunteer Service Project Application (cont'd)

On motion by Mr. Wittman, seconded by Ms. Stave and unanimously carried, the Volunteer Service Project Application submitted by Mr. Will Rogers for The Preserve was approved:

Ayes: (Stave
(Stout
(Wittman

Abstain: (None
Absent: (Panconi & Stannard)

Nays: (None

Public Comment

The Mayor opened the meeting to public questions and comments on those items not on the Agenda. Mr. Mark Berkowsky, President, Cranbury Housing Associates, addressed the Township Committee concerning communication with the residents. He urged the Township Committee members to listen to what people think and say. Mr. Berkowsky expressed his displeasure at not being invited to participate in the last two (2) Closed Session meetings regarding the Township's Third Round Affordable Housing Plan, which were attended by the Township's Professionals. He reminded the Township Committee the role Cranbury Housing Associates has played during the past 25 years in helping the Township to meet its affordable housing obligations. Mr. Berkowsky stated he understands discussions such as strategies and land acquisitions should not be open to the public at this time. However, he charged the Township with not taking advantage of having all of its professionals take part in all of the discussions (not including Cranbury Housing Associates). Mr. Berkowsky added Cranbury Housing Associates has provided affordable housing services to the Township for over forty-five years and in its current capacity for over twenty-five years. It has acted as a consultant to the Township, along with paid consultants through the submission of Round One, Round Two and the first submission of Round Three. C.H.A. did not have the opportunity to hear the information that was presented at the two (2) Closed Session meetings which does not help C.H.A. in giving the Township information or other points of view. Mr. Berkowsky added C.H.A. has the most knowledge about affordable housing in Cranbury, however, were not part of those discussions. In addition, C.H.A. has interfaced in the planning process with neighbors adjacent to every site that has been developed in Town and understands their concerns. Mr. Berkowsky stated, even though he is President C.H.A., while serving on the confidential COAH subcommittee, he does not share confidential information with his Board or anyone else. He further added, he may have not always agreed with the Township's other consultants; however, has always presented his point of view to give the Township more information to allow it to be better informed to make its decisions. Mr. Berkowsky reported he has been told that his lack of participation in the last two (2) Closed Sessions was due to the confidential nature of the meetings and suggested, as the President of C.H.A., a registered Architect and Licensed Planner, he carries the same status as that of the Township's other consultants, except he does not charge an hourly fee. Mr. Berkowsky added, C.H.A.'s Attorney agrees with that opinion.

Mr. Berkowsky stated he wanted to also discuss the status of the design for the Route 130-D site, which C.H.A. is now calling "Orchard Court". C.H.A. was authorized by the Township Committee to start the bare designs of the site. C.H.A. prepared many design concepts and finally developed one that was satisfactory enough for C.H.A. to start preliminary meetings with the neighbors in the two (2) surrounding developments—Cranbury Estates and Cranbury Walk. After those initial meetings in which our plans showed 44 units, it was clear that all neighbors wanted us to address three (3) issues: That the vehicular connection for the project would only be via Route 130 and we immediately agreed with this issue, That there is sufficient open space and buffering to adjacent properties and that there are too many units and the density should be reduced. C.H.A. was also in agreement with those concerns. In May those facts were stressed

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to the Township Committee. Since that time C.H.A. has been re-designing the site plan and developed different plans and elevations to take back to the neighborhood groups for additional Public Comment (Continued)

Mr. Mark Berkowsky, President, Cranbury Housing Associates(cont'd)

review and comments. Mr. Berkowsky indicated at the time of the meetings with neighbors, he told them that C.H.A.'s goal in meeting with them was to hear their concerns about the development of the site and try to litigate their concerns so that when a public presentation is given they will be able to attend the meetings and state they are supportive of C.H.A.'s plans. Mr. Berkowsky stated at no time did he ever indicate that C.H.A. represented the Township Committee's views or any changes from the approved concepts in the development of the Route 130-D site. The original planning document indicated that this site would be between 29-48 family rental units. He told the neighbors that any changes from that concept must be taken up with the Township Committee. Mr. Berkowsky stated rumors and innuendoes have taken place. Now is the time to communicate and share the facts.

Mayor Stout responded that everyone appreciates what C.H.A. and Mr. Berkowsky has and will continue to do. Without C.H.A. and Mr. Berkowsky, the Township does not move forward and would not have accomplished what has been done thus far. He did not think that the two (2) Closed Sessions that you referenced were about strategy; they were about the Township's plans. The Township currently is involved in two (2) law suits. Mayor Stout stated it is his understanding that the Township Committee needs to basically keep Closed Session meetings closed as a protective measure. As far as Mr. Berkowsky's comment about the subcommittee meetings being cancelled, that is not the case; there is actually a meeting scheduled for Monday, October 6th at 7:30 p.m.

Mr. Wittman stated he totally agrees with Mayor Stout and the last two (2) Closed Sessions were about land acquisition. Regarding the Route 130-D site, he thanked Mr. Berkowsky for working with the neighbors and stated the final decision will rest with the Township Committee as far as the final numbers. He added, the Township has constantly kept C.H.A. and Mr. Berkowsky involved with everything it has done thus far.

Ms. Stave echoed Mayor Stout and Mr. Wittman's remarks and added, to the list of everything Mr. Berkowsky has done, the great job he recently did for the public presentation on COAH.

Mr. Berkowsky responded he appreciated everyone's comments, however, the issue is at what point are C.H.A.'s services any different than the other consultants who were included in the two (2) Closed Session meetings. Mayor Stout responded he is not an attorney however; perhaps the Township needs to understand what that relationship is. The Township cannot have the issue perpetuate because an entity or someone that is critical to the "mission" feels outside of the mission. Mayor Stout asked Mr. Berkowsky to walk away with the understanding that the Township is currently in two (2) lawsuits and the state of COAH is in flux; there have been changes some of which could favor the Township, some of which we do not know where they are going to come out because they seem to be debated in Trenton. Mr. Berkowsky requested to have a dialogue outside of this meeting. Mayor Stout indicated that would be fine.

Mr. Peter Wise, a member of the Cranbury Housing Associates Board of Trustees, stated there is an appearance of a lack of trust by not including Mr. Berkowsky in the Closed Session discussions. Mr. Wise asked why Mr. Berkowsky cannot be retained as a consultant by the Township for \$ 1.00 so that he can be included in the Closed Session meetings. He urged the Township to take every step possible to include Mr. Berkowsky in the meetings. Mayor Stout responded it is a legal issue and has never been a trust issue. He added, Mr. Berkowsky and C.H.A. are and will continue to be critical to what the Township needs to accomplish. Ms. Waterbury, Esquire, Township Attorney, explained matters that fall under the "Attorney/Client Privilege " can only be discussed with the client and C.H.A. performs an absolutely invaluable service to the Township. Unfortunately, C.H.A. is not part of the Township government, and

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Public Comment (Continued)

Mr. Mark Berkowsky, President, Cranbury Housing Associates(cont'd)

therefore, in the eyes of the Court, does not constitute her "Client" (Township elected Officials, staff and contracted professions). She further explained, what happens is if someone other than the client is present for the discussion, it breaches the privilege and it therefore means that anything that was actually discussed can no longer be kept confidential. Anyone has the right to depose her and quite literally force her to divulge what she had told the individuals in the meeting. The problem is not with trust but rather how the Courts would view Mr. Berkowsky's attendance at the Closed Session meetings. Mayor Stout offered the Township could research under what circumstances the Township could include Mr. Berkowsky in the meetings and asked Ms. Waterbury to get back to the Township Committee.

Ms. Helene Hughes, Secretary, Cranbury Housing Associates, asked if the Route 130-D site is out of the picture and if anything else is in sight in its place. Mr. Wittman responded Route 130-D is not out of the picture. Mayor Stout responded the Township is not at liberty to discuss any other potential sites.

Mr. Wyn Cody, Adams Drive, recommended the Township contract with Mr. Berkowsky, Cranbury Housing Associates, as a consultant to allow him to be part of the Closed Session meetings.

Mayor Stout responded it is fair to say, Mr. Berkowsky and C.H.A. have been part of this process. There were only two (2) occasions where he was not part of a meeting. Mayor Stout explained the reason he gave is the reason as it stands; the Township is involved in two (2) lawsuits and if there is a way to protect "privilege" in relationship to the two (2) law suits, he will make sure the Township does include Mr. Berkowsky and C.H.A. in the discussions in the future.

There being no further comments, the Mayor closed the public part of the meeting. Mayor Stout stated Mr. Berkowsky and C.H.A. have done a great job in the 40+ years it has been involved in the Township's Affordable Housing Program; it is a model in the State. Cranbury Township is proud of C.H.A. and wants to continue to have them involved in the future. It is unfortunate that the Township is in a very difficult situation at this time regarding COAH.

On motion by Mr. Wittman, seconded by Ms. Stave and unanimously carried, the meeting adjourned at 8:20 p.m.

Kathleen R. Cunningham, Clerk