

BOROUGH OF METCHEN  
COUNCIL MINUTES  
March 21, 2011

A Regular Meeting of the Borough Council was held in the Council Chambers of the Borough Hall on Monday, March 7, 2011. The Meeting was called to order at 6:30 p.m. by Mayor Vahalla. The Invocation given by Council President Cammarano and was followed by the Pledge of Allegiance.

The Mayor advised that adequate notice of this meeting was provided by an annual notice sent to the Home News and Tribune and the Star Ledger and filing a copy with the Borough Clerk within seven days following the annual organization meeting of the body.

Present were Councilmembers Lease, Muldoon, Rasmussen, Rubin, Wallace and Council President Cammarano.

Also present were Mayor Vahalla, Borough Administrator Boerth, Borough Attorney Murphy, and Borough Clerk Harris.

**MUNICIPAL BUDGET DISCUSSION - POLICE**

Borough Administrator Boerth stated that the Council was in receipt of the detailed Police budget and that in the provided Budget Revenue Preparation Worksheet Booklet the Police budget begins on page 17.

Captain Rob Rentenberg discussed the budgetary concerns for the Police Department.

**OPERATING BUDGET**

Captain Rentenberg discussed the increase to the Equipment Maintenance and Repair line item in the budget. The Captain stated that the Equipment Maintenance and Repair line item encompasses computers, 911 system, Computer Assisted Dispatch System, Info Cop System, a system that records all dispatch conversations as well as any other telephone conversations coming through the Police Department along with the contracts and maintenance involved in maintaining the current equipment for the department. Captain Rentenberg also stated that the only possible issue he saw in the budget was with the proposed decrease for general equipment which included ammunition for the Police Department. The cost of precious metals are increasing as well as the increase in demand for ammunition due to the war which is causing orders to need to be placed a year in advance.

Mayor Vahalla stated that the Borough has a firing range downstairs in Borough Hall where the officers are required to qualify twice a year. Having the facility on site saves the Borough money in overtime and rental cost associated with utilizing another location for qualifying purposes.

Councilman Muldoon asked if the Borough could generate revenue by renting out the firing range to other Police Departments.

Captain Rentenberg stated that he would have to look into the legal ramifications involved with that request.

**CAPITAL BUDGET**

In the Capital Budget it was proposed to purchase three SUV's or one patrol car from the Operating Budget and two SUV's through Capital funds. Captain Rentenberg stated that the police vehicles get a lot of use so they are placed into service on a rotating basis.

Councilman Muldoon asked if the trend with other police departments is to move towards utilizing SUV's rather than patrol cars.

Captain Rentenberg stated that SUV's can be purchased under Capital budget funds whereas patrol cars cannot.

Council President Cammarano asked how the Police Department was managing its manpower with the recent retirements and personnel issues within the police department.

Captain Rentenberg stated that the Community Policing Officer and Traffic Officer have been placed back on the road to patrol.

Council President Cammarano asked how the Police overtime compensation decreased approximately 6,000 dollars from last year.

Mayor Vahalla stated that the Pitman Style schedule allowed the Borough to gain 67 hours more per officer per year without additional monetary compensation.

Borough Administrator Boerth stated that the numbers that were being reviewed reflected older numbers due to the fact that the reports were tabulated as of November 3.

Captain Rentenberg stated that the numbers for overtime were affected due to the untimely leave of Police Officer Fibbs and the retirement of Police Officer Mosko who both utilized vacation time which caused the Police Department to be short in manpower and have to place another officer on duty. That increased the numbers of hours worked by the remaining officers which in turn created overtime hours.

Borough Administrator Boerth stated that there are extraordinary circumstances factored into the overtime numbers and that the Police Department needs to be commended for carefully managing the use of police officers to minimize the use of overtime.

Council President Cammarano asked if there was a possibility of reducing the idling time of police vehicles by turning the vehicle off.

Captain Rentenberg stated that the lights and radio utilize too much power to have the car remain in the accessory position.

Councilwoman Rubin stated that according to the documents provided to her that the Police Department received 3,000 additional calls over last year's accounting.

Captain Rentenberg stated that this discrepancy is probably due to the new CAD system the Police Department had received. The system allows for more types of calls to be tracked and entered than the previous system. The new call number is more indicative of the call volume the department sees.

Councilwoman Rubin stated that the number of calls in this case does not affect the number of incidences that the Police Department responds to.

Councilwoman Rubin stated that the intersection between Main Street and Amboy Avenue has the most incidences of accidents within the Borough and if there was anything the Borough should look to change at the intersection to minimize the accidents from occurring.

Captain Rentenberg stated that the intersection in question is a County intersection but the situation could be looked at and brought to the attention of the County.

Councilwoman Rubin asked if there was a possibility of eliminating crossing guards within the Borough.

Captain Rentenberg stated that some posts have been eliminated with no complaints received and that he would like to revisit that issue in the future after possible traffic studies have been performed.

Councilman Lease asked what it would take for the Police Department to re-implement the Citizen Police Academy.

Captain Rentenberg stated that the program was not eliminated but due to the decrease in manpower the program did not run last year. He further stated that the program will be re-implemented in the future.

Councilman Muldoon stated that he felt that the Police budget was very well thought out and that new innovative ways to do more with less need to be actualized in the coming budget years.

Councilwoman Rubin asked if the proposed purchase of new Police vehicles is done will that then decrease the Equipment, Maintenance and repair line item in the budget.

Captain Rentenberg stated that the Repair and Maintenance line item does not include vehicle maintenance. That expenditure comes for the Department of Public Works budget after the manufacture warranty expires.

Councilman Lease asked if one SUV would be sufficient for the Police Department.

Captain Rentenberg stated that the department currently has 2 SUV's and a third or fourth would help the Borough during inclement weather.

### **APPOINTMENTS**

Mayor Vahalla stated that as of March 22, 2011 Captain Robin Rentenberg will be appointed as Acting Chief of Police.

### **MUNICIPAL BUDGET DISCUSSION CONTINUED**

#### **CAPITAL BUDGET**

Borough Administrator Boerth stated that all of the Department heads only requested vitally needed equipment to maintain the level of service the residents of Metuchen receive. Borough Administrator Boerth stated that he is recommending that the garbage truck, dump truck, salt spreader, pickup truck and loader backhoe be replaced for the Department of Public Works with funds provided by this year's Capital Budget. He went on to recommend the purchase of one SUV for the police department from the Capital Budget expenditures and 1 regular patrol car in the general operating budget. The total of those expenditures along with the mandatory 2-20 charges comes to a total of \$605,000. Borough Administrator Boerth also stated that the he is recommending that the radio communications purchase and the power rescue tools are necessary purchases for the Fire Department. Borough Administrator Boerth also recommended----- for METV to remain in operation. He went on to discuss the Road Program budget and revised his previous recommendation to now pave all of Linden Avenue from Christol to Middlesex Avenue and also to include Factory Street and Adams and also curbing for Sharon Court. The Borough would need to contribute an extra \$75,000.00 to the budget on top of the \$200,000.00 DOT grant that the Borough received in order to complete these projects. This recommendation will not cause any additional appropriations to the proposed budget.

Councilwoman Rubin asked if the \$55,000.00 appropriation for the communication radios would be spread over two years according to the Fire Chiefs recommendations or was it one lump sum payment.

Borough Administrator Boerth stated that he was not sure but that he saw no cost savings by spreading the payment out over two years when you are bonding.

Councilwoman Rubin asked if Borough Administrator Boerth would explain how roads are chosen for repair.

Borough Administrator Boerth stated that the Public Works Director, the Borough Engineer and himself drive through town and assess all of the roads and then prioritize them by necessity.

Mayor Vahalla stated that the Borough must look at how much money the Borough has allotted

both through grants and the Capital budget to determine what projects can be accomplished. The list may have to be adjusted due to the rising cost of asphalt.

Borough Administrator Boerth also explained that a new law has gone into affect that allows the contractor to increase his price if the price for asphalt increases.

Councilman Wallace questioned if it was possible to purchase one SUV for the Police through the Capital Budget and well as one through the general operating budget.

Borough Administrator Boerth stated that he would review this idea with the Police Department.

Councilman Muldoon asked what \$1,025,000.00 dollars meant to the debt service numbers of the Borough.

Borough Administrator Boerth stated that the Borough would go out for Bond Anticipation Notes until sufficient funds are secured to go out to permanent financing.

Councilman Muldoon asked once the Borough goes out to permanent financing how long would the term be for.

Borough Administrator Boerth stated that it depends on the items listed for the bond and their useful life and those time frames are determined by Bond Counsel.

### **RECESS OF MEETING**

On a motion by Council President Cammarano and seconded by Councilman Muldoon, with all in favor a brief recess was taken.

On a motion by Council President Cammarano and seconded by Councilwoman Rubin, with all in favor the meeting reconvened.

### **AGENDA SESSION**

On a motion by Council President Cammarano and seconded by Councilwoman Rubin, with all in favor the agenda session was opened.

Council President Cammarano stated that Resolution R2011-75 be removed from the consent agenda.

On a motion by Council President Cammarano and seconded by Councilwoman Rubin, with all in favor the agenda session was closed.

### **APPROVAL OF MINUTES**

On a motion by Council President Cammarano and seconded by Councilman Lease, with one abstention from Councilman Muldoon with the remaining in favor, the minutes of March 7, 2011 were approved.

### **PUBLIC COMMENTS**

The Mayor opened the meeting to the public for anyone wishing to comment.

Hearing no one wishing to comment, the Mayor closed the first public comment portion of the meeting.

### **ORDINANCE PUBLIC HEARING**

Councilman Wallace recused and removed himself from the dais for the discussion and vote on Ordinance 2011-3 due to his affiliation with the Fire Department.

Borough Clerk Harris stated the Ordinance 2011-3 **AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF METUCHEN, CHAPTER 93, ENTITLED FIRE PREVENTION** was published according to law.

On a motion by Council President Cammarano and seconded by Councilwoman Rubin, with all in favor the said affidavit of publication was accepted.

Borough Clerk Harris read Ordinance 2011-3 by title.

Councilman Lease asked who would be receiving the funds collected due to this new ordinance.

Mayor Vahalla stated that the fees go to the Fire Department directly and may be used to repay the Borough for purchases made which are related to Fire Prevention but cannot be utilized in the general fund.

Borough Attorney Murphy stated that the benefit of doing your own inspections is that the Borough does not lose local control or the fees associated with said inspections.

Councilman Lease stated that the County should not be able to provide these services to Metuchen for the reasons stated by the Borough Attorney and also because then the County may look to provide other services.

Council President Cammarano stated that the County fee schedule is much higher than our local fees and they are a lot less flexible when it comes to providing notice for the inspection.

Mayor Vahalla also stated that the ordinance will help make Metuchen safer by helping to eliminate illegally subdivided units with no smoke alarms or carbon monoxide detectors.

Mayor Vahalla opened the meeting to public comment on said ordinance only.

Suzanne Andrews (East Chestnut Avenue) Ms. Andrews asked if the ordinance also applied to non renting homeowners.

Mayor Vahalla stated that the ordinance does not affect non renting homeowners but that homeowners are required to have an inspection upon the sale of their home.

All of the Council was in agreement that the new wording in the ordinance clarifies who must register and who must not.

Ms. Andrews also stated that the Council should appoint the Fire Official not just the Mayor.

Mayor Vahalla stated that the Mayor has always appointed the Fire Official and that he answers to the Borough Administrator because Council does not run the Borough they just set policy.

Ms. Andrews also stated that the removal of the Fire Official should be with an at will clause not a just cause clause.

Borough Attorney Murphy explained that the Fire Official would prefer the just cause clause because that provides him with due process. He also stated that the removal clause is a check and balance because the Mayor appoints and the Council can remove.

Hearing no one else wishing to speak, Mayor Vahalla closed the meeting to public comment.

Councilman Lease asked if the Borough would require more inspectors to perform the provisions set forth in this ordinance.

Mayor Vahalla stated that the number of inspectors would not increase but their hours may.

On a motion by Council President Cammarano, seconded by Councilwoman Rubin with all in favor said Ordinance 2011-3 be approved on second reading and published according to law.

**Roll Call Vote:**

**Ayes: Councilpersons Lease, Muldoon, Rasmussen, Rubin, Council President Cammarano**

**Nays: None**

**Abstentions: Councilperson Wallace**

**Motion Carried.**

Councilman Wallace returned to the dais.

**ORDINANCE NO. 2011-3**

**AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF METUCHEN,  
CHAPTER 93, ENTITLED FIRE PREVENTION.**

**BE IT ORDAINED**, by the Mayor and Council of the Borough of Metuchen as follows:  
Chapter 93 of the Code of the Borough of Metuchen is hereby amended to read as follows:

**Chapter 93  
FIRE PREVENTION**

**§ 93-1. Local enforcement.**

Pursuant to Section 11 of the Uniform Fire Safety Act (P.L. 1983 c. 383), the New Jersey Uniform Fire Code (N.J.A.C. 5:70-1 et seq.) shall be locally enforced in the Borough of Metuchen.

**§ 93-2. Agency designation.**

The local enforcing agency shall be the Bureau of Fire Prevention which is hereby created in the Municipal Fire Department of the Borough of Metuchen. The Bureau of Fire Prevention shall hereinafter be known as the local enforcing agency.

**§ 93-3. Duties.**

- A. The local enforcing agency shall enforce the Uniform Fire Code in all buildings, structures, and premises within the established boundaries of the Borough of Metuchen other than premises owned or operated by the federal government, interstate agencies or the state.
- B. The local enforcing agency shall faithfully comply with all the pertinent requirements of the Uniform Fire Safety Act and the Uniform Code.

**§ 93-4. Organization.**

The local enforcing agency established by § 93-2 of this chapter shall be a part of the Municipal Fire Department of the Borough of Metuchen and shall be under the direct supervision and control of a Fire Official who shall report to the Borough Administrator.

**§ 93-5. Appointments; qualifications; term of office; removal.**

- A. Fire Official. The Fire Official shall be certified by the state and appointed by the Mayor in consultation with the Chief of the Fire Department.
- B. Term of office. The Fire Official shall serve for a term concurrent with the term of the Fire Chief with each term being for two years.
- C. Inspectors. Inspectors in the local enforcing agency shall be appointed by the Mayor in consultation with the Fire Official. All life-hazard-use inspectors shall be certified by the state.
- D. Removal from office. The Fire Official and inspectors of the agency shall be subject to removal by the governing body for just cause. Before removal from office, all persons shall be afforded an opportunity to be heard by the governing body or a hearing officer designated by the same.

**§ 93-6. Board of Appeals.**

Pursuant to Sections 15 and 17 of the Uniform Fire Safety Act, any person aggrieved by any order of the local enforcement agency (or agencies) shall have the right to appeal to the Board of Appeals of the County of Middlesex.

**§ 93-7. Penalties. [Amended 6-21-2004 by Ord. No. 2004-10]**

Any person, firm or corporation that is in violation shall be subject to a penalty. The penalty for the failure to register or failing to notify the Fire Official of a change in occupancy shall be up to \$500. Unpaid penalties can be subject to the issuance of a summons to appear in Municipal Court in the Borough of Metuchen.

All annual registration set forth herein, except those registrations which are triggered by the sale or change of occupancy, must occur by June 1<sup>st</sup>. A late fee penalty shall be assessed in the amount of \$10.00 per unit multiplied by the number of months the registration is overdue.

**§ 93-8. Life hazard uses.**

The local enforcing agency established by § 93-2 of this chapter shall carry out the periodic inspections of life-hazard uses required by the Uniform Fire Code on behalf of the Commissioner of the New Jersey Department of Community Affairs.

**§ 93-9. Non-life-hazard uses. [Amended 6-21-2004 by Ord. No. 2004-10]**

Each residential unit in the Borough of Metuchen, including owner occupied single family units, shall have a smoke detector and carbon monoxide detector on each level, and a fire extinguisher in the kitchen or within 10 feet thereof. Inspections of single family units shall be scheduled for each change of occupancy. Fees shall be charged in accordance with this Chapter.

All residential units within the Borough shall be inspected and charged a fee upon sale or change of tenant.

**§ 93-10. Registration Fees.**

The following non-life hazard uses shall register with the Bureau of Fire Prevention and pay an annual registration fee, according to the following schedule:

- A. (1) Mercantile/Retail/Banking \$50 for the first 2,000 Sq. Ft \$5 for Each additional 1,000 or fraction thereof.
- (2) Factories, Assembly Plants, Wood and metal Shops \$75 for the first 1,000 Sq. Ft. \$10 for each additional 1,000 or fraction thereof.
- (3) Warehouse, Storage (No Assembly Manufacturing or Retailing each additional 1,000 or fraction thereof. \$50 for the first 3,000 Sq.Ft.\$5 for
- (4) Business/Office \$50 for the first 2,000 Sq. Ft. \$5 for each additional 1,000 or fraction thereof.
- (5) Multiple Dwellings (three or more Dwelling units) \$50 for the first 4 dwelling units \$10 for each additional 4 units or fraction thereof.
- (6) Other Use: \$50 Minimum Inspection Fee
- B. Residential (one or two family houses): Annual registration fee is \$40 per rental unit.
- C. Uses not classified above that are subject to the Uniform Fire Code will be classified as business uses.
- D. Uses required to register with the State as life hazard uses shall not be required to register under this section.
- E. In the discretion of the Fire Official, vacant buildings will be charged and inspected according to the previous use of the building.

**§ 93-11. Inspections**

The Fire Official shall periodically inspect all uses registered hereunder once every two years. If more than one inspection is required in any year, due to a change in occupancy, the owner shall pay for each additional inspection an amount equal to the annual registration fee.

**§ 93-12. Change of Occupancy**

The owner of any premises that is registered hereunder shall notify the Fire Official in writing of each change of occupancy. At the time thereof or prior to the change of occupancy, the owner of any premises that is registered hereunder shall re-register with the Bureau of Fire Prevention and pay the annual registration fee.

**§ 93-13. Additional Required Inspection and Fees.**

In addition to the inspections and fees required pursuant to the Uniform Safety Act and the regulations of the Department of Community Affairs the following additional inspections and fees shall be required.

A. The application fees for the permits listed in N.J.A.C. 5:70-2.7(b) shall be as provided by state regulation and are currently as follows:

Type	Fee
1	\$42.00
2	\$166.00
3	\$331.00
4	\$497.00

B. The cost for the issuance of a Certificate of Fire Code Status shall be \$35.

C. The in-lieu-of-inspection application fee for a certificate of smoke detector (no substitution allowed for smoke detectors) and carbon monoxide alarm compliance (one on every level) (CSDCMAC), as required by N.J.A.C. 5:70-2.3, and portable fire extinguisher requirements in accordance with the New Jersey Law §1 of P.L. 1991, c. 92 (C.52:27D-198.1) (located within 10 feet of kitchen area), shall be based upon the amount of time remaining before the change of occupant is expected, as follows: **[Amended 11-20-2006 by Ord. No. 2006-21]**

(1) Requests for CSDCMAC received more than 10 business days prior to the change of occupant: \$35.

(2) Requests for CSDCMAC received four to 10 business days prior to the change of occupant: \$70.

(3) Requests for CSDCMAC received fewer than four business days prior to the change of occupant: \$125.

(4) Reinspection fee: \$25 each time.

**§ 93-14. Prohibitions.**

A. Storage of explosives and blasting agents is hereby prohibited throughout the entire Borough of Metuchen.

B. Storage of flammable liquids in outside aboveground tanks is hereby prohibited except where permitted by Chapter 110, Land Development, of the Code of the Borough of Metuchen. The construction, installation and maintenance of said tanks shall conform to the requirements of this Code and the Uniform Construction Code.

C. Bulk plants for flammable or combustible liquids are hereby prohibited throughout the entire Borough of Metuchen.

**§ 93-15. Construction. [Added 11-20-2006 by Ord. No. 2006-21]**

A. All buildings open to the public, new or existing construction shall have portable fire extinguishers installed in accordance with NFPA 10. All buildings shall have illuminated exit signs and emergency lighting installed in accordance with the Uniform Fire Code (permit from Building Department required for exit signs and emergency lighting).

B. All new construction that requires a water sprinkler system or standpipe system shall be installed according to the New Jersey Uniform Construction Code and maintained according to NFPA 25. All Fire Department connections shall be five-inch storz.

**§ 93-16. Effect of chapter.**

Nothing in this chapter shall be construed to permit any construction or use which is prohibited by Chapter 110, Land Development, of this Code or other ordinances of the Borough.

**§ 93-17. Fire areas and fire lanes saved from repeal.**

Nothing herein contained shall be considered to repeal any previously established fire area or fire lane which shall continue to remain in full force and effect.

**§ 93-18. Validity; conflicts with state law.**

The invalidity of any section or provision of this chapter or of the Fire Prevention Code adopted by this chapter shall not invalidate other sections or provisions thereof. Any provisions of this chapter or the Fire Prevention Code adopted by this chapter which conflict with any state law or regulation shall have no effect, and such state law or regulation shall prevail in respect to the interpretation and enforcement of this chapter and the Code adopted herein.

**COMMUNICATIONS CONSENT AGENDA**

On a motion by Council President Cammarano, seconded by Councilwoman Rubin, with all in favor the Communications Consent Agenda item number 6 was approved.

**COUNCIL REPORTS**

Council President Cammarano reiterated that the Police Department is urging that all vehicles be locked to help deter break ins.

Council President Cammarano also stated that the work will continue on the Main and Penn Street Crosswalk for approximately two weeks and those periodic street closures will be occurring at that location.

**EMERGENCY MEDICAL SERVICES**

Council President Cammarano stated that the EMS met last week and gained approximately five new members and that if anyone else was interested in volunteering that they contact the EMS via the Borough website and/or through notifying the Council President.

**OFFICE OF EMERGENCY MANAGEMENT**

Council President Cammarano stated that the Reverse 911 system was tested last week. The Council President requested that residents go to the Borough website and register cell phone numbers and email addresses for additional notification of any emergencies.

**RECREATION**

Councilman Wallace stated that the Recreation Commission held their annual Daddy Daughter Night in which five hundred and eighty people attended and that the Annual Easter Egg Hunt will take place on April 16 at 9:00am at Myrtle Park.

**CABLE TV AND TECHNOLOGY**

**YOUTH SERVICES**

Councilman Wallace stated that the magic show sponsored by the Youth Services Board at Campbell School will be occurring some time in April and that more information will be

forthcoming.

### **CHAMBER OF COMMERCE**

Councilwoman Rubin stated that the Chamber of Commerce held its annual installation dinner where residents were recognized for their contributions to Metuchen. Also the Dave Tuttrone Memorial Scholarship was awarded. The Chambers upcoming events will include the April 30<sup>th</sup> Town Wide Garage Sale, June Bug events and the Farmers Market.

### **SENIOR CITIZENS**

Councilwoman Rubin stated the Senior Citizens Commission will meet on April 14<sup>th</sup> at 5pm.

### **PLANNING BOARD**

Councilwoman Rubin stated that the Planning Board met and discussed possible recommendations for ways to improve usage of the downtown area in Metuchen. The recommendations discussed will be presented to Council at a later date.

### **DEVELOPMENT**

Councilwoman Rasmussen stated that the Development Commission is requesting that a Planning Board Member be appointed to the Development Commission.

Mayor Vahalla stated that due to the length of Planning Board meetings the he could not find someone that could donate more time and in essence sit on both boards.

Councilwoman Rubin stated that she would be willing to share any necessary information with the Development Commission.

### **SHADE TREE**

Councilwoman Rasmussen stated that the Shade Tree Commission will be planting eighteen trees most of which are homeowner requests. She went on to state that the Commission would like to draft a letter for Council approval to be sent to all local tree removal companies outline the requirement to have a tree from a right of way removed.

Mayor Vahalla stated that the Borough ordinance should be included in that mailing and should be reviewed by the Borough Administrator and Attorney.

### **ENVIRONMENTAL**

Councilwoman Rasmussen stated that the Environmental Commission would like to have an electronic waste pickup scheduled and to also have flyers sent out to the residents notifying them of this extra pickup. Councilwoman Rasmussen also stated that Earth Day will be on April 16 in conjunction with the Recreation Department. It will encompass a walk from Trail Head Park to the Pearson Avenue area where participants will meet with PSE&G representatives and view the solar farm at the facility.

Mayor Vahalla stated that the most effective way to notify residents of the electronic pickup is through the website but that these items are not picked up curbside and that this could not be accomplished on this short notice.

Councilwoman Rubin stated that the Chamber would place a small line on the mailings that the Chamber sends out to all garage sale participants reminding them of the proper procedure to dispose of electronic waste.

## **CULTURAL ARTS**

Councilman Muldoon stated that the June Bug Committee is looking to raise \$2,500 by April 24 to help fund bringing New York City based artists to the Metuchen Area. The Commission has set up a website named kickstatrter.com where donations will be accepted.

## **POOL**

Councilman Muldoon stated that Pool usage applications are now available on-line and at Borough Hall in the Recreation Department office. April 15 is the deadline for early registration discounts.

## **PARKING AUTHORITY**

Councilman Muldoon stated that ten developers picked up the RFP for the Pearl Street Parking Lot project and the submittal deadline is May 16.

## **HISTORIC PRESERVATION**

Councilman Muldoon stated that the Historic Preservation Committee will meet on March 31 at 7:30pm.

## **LIBRARY**

Councilman Lease stated that the Library shows international movies once a month in the spring and will increase that to once a week in the summer months at 2pm and then again at 7pm. The Library can be contacted with questions at 732-632-8526.

## **REPORT FROM BOROUGH ADMINISTRATOR**

Borough Administrator Boerth had no report.

## **REPORT FROM BOROUGH ATTORNEY**

Borough Attorney Murphy had no report.

## **MAYORS REPORT**

Mayor Valhalla stated that he, Council President Cammarano and Borough Administrator Boerth met with the District at Metuchen owners and that demolition on that site will be begin in July or August. Clean up will begin immediately on the property and full construction will begin next year. Mayor Vahalla stated that the high school play named "Spelling Bee" will be presented on March 24 -26. A free viewing is being offered to seniors on Wednesday night with a spaghetti dinner. Anyone interested should contact Cathy Ostermueller at the Senior Citizens Center.

## **NEW BUSINESS/CONSENT AGENDA**

On a motion by Council President Cammarano, seconded by Councilwoman Rubin resolutions 2011-68 through 2011-74 and 2011-76 had been approved.

## **RESOLUTION NO. 2011-68**

## **RESOLUTION AUTHORIZING TEMPORARY APPOINTMENT OF ACTING**

## CONSTRUCTION CODE OFFICIAL

BE IT RESOLVED, by the Mayor and Borough Council of the Borough of Metuchen that *John Soltesz* (Lic. # 005721) be and is hereby appointed as Acting Construction Code Official for the Borough of Metuchen during the calendar year 2011 for a period of sixty (60) days, commencing March 22, 2011

BE IT FURTHER RESOLVED, that the Borough Clerk shall transmit a certified copy of this resolution to the New Jersey Department of Community Affairs.

### **RESOLUTION 2011-69**

**BE IT RESOLVED** by the Mayor and Borough Council of the Borough of Metuchen that *Anne M. Tucker*, be and is hereby appointed as the Court Administrator for the Borough of Metuchen; and

**BE IT FURTHER RESOLVED** that said appointment shall commence on March 22, 2011.

### **RESOLUTION NO. 2011-70**

**WHEREAS**, bids were received by the Borough Administrator on March 15, 2011 for the 2011 Municipal Pool Maintenance for the Borough of Metuchen; and

**WHEREAS**, the Finance Officer has determined that sufficient funds will be available in the amount of \$15,907.95 as evidenced by the Finance Officer's certification,

**NOW, THEREFORE, BE IT RESOLVED** by the Borough Council of the Borough of Metuchen, County of Middlesex, State of New Jersey that the contract for the 2011 Municipal Pool Maintenance be and the same is hereby awarded to most responsive bidder, Aquatic Service, Inc., 170 Burlington Avenue, Spotswood, NJ 08884.

**BE IT FURTHER RESOLVED**, that the Mayor and the Borough Clerk are hereby authorized and directed to execute the contract for the same.

**BE IT FURTHER RESOLVED** that the certified check or bid bond of the successful bidder and the next lowest bidders:

1. Aquatic Service Inc., 170 Burlington Avenue, Spotswood, NJ 08884.
2. RJR Engineering Co., Inc., 105 Guinea Hollow Road, Califon, NJ 07830
3. Todd Harris Co. Inc., Po Box 682, Edison, NJ 08818

be returned upon the receipt of a fully executed contract and other required documents.

### **RESOLUTION NO. 2011-71**

**BE IT RESOLVED** by the Borough Council of the Borough of Metuchen that *Robert Ring*, be and he is hereby appointed as a Police Officer of the Police Department of the Borough of Metuchen, Middlesex County, State of New Jersey in accordance with law at the starting rate of Patrolman with said appointment being effective March 7, 2011.

### **RESOLUTION NO. 2011-72**

**WHEREAS**, N.J.S.A. 40A:4-19 of the Local Budget Act provides that temporary appropriations shall be made for the purposes and amounts required in the manner and time therein provided;

**NOW, THEREFORE BE IT RESOLVED** that the following additional temporary emergency appropriations shall be made for the year 2011, effective March 21, 2011:

Zoning	OE	1,000.00
Police	S & W	200,000.00
Streets & Roads	OE	10,000.00
METV	OE	5,000.00
Payroll Processing		5,000.00
PERS		307,349.00
PFRS		683,129.00
Insurance		100,000.00
	<b>TOTAL</b>	<b>1,311,478.00</b>

**RESOLUTION NO. 2011-73**

**WHEREAS**, there are unexpended balances in various 2010 appropriation reserve accounts not required for the balance of 2010; and

**WHEREAS**, additional sums are required for the operating expenses of other Borough accounts,

**NOW, THEREFORE, BE IT RESOLVED**, that the following transfers be approved:

APPROPRIATION	TRANSFER IN	TRANSFER OUT
ADMINISTRATIVE & EXECUTIVE OE	7,000.00	
FIRE OE	250.00	
SEWERS OE	100.00	
STREETS & ROADS OE		7,350.00
TOTALS	7,350.00	7,350.00
POOL SW		700.00
POOL OE	700.00	
TOTALS	700.00	700.00

**RESOLUTION NO 2011-74**

**WHEREAS**, the Tax Collector received the necessary amount to redeem the following Tax Sale Certificate on the following property:

<u>Cert #</u>	<u>Block/Lot</u>	<u>Address</u>	<u>Lienholder</u>
09-00005	172/24	35 Blair Avenue	Royal Tax Lien Services, LLC

**BE IT FURTHER RESOLVED** that the Tax Collector be authorized to cancel this lien from the municipal records.

**RESOLUTION NO. 2011-76**

**RESOLUTION FOR ASSESSOR'S CORRECTION – CANCEL 2010 TAXES**

**WHEREAS**, Block 93, Lot 64.1( as listed in the 2009 Tax List) was part of a 2009 subdivision/lot merger for 44 Victory Court

**WHEREAS**, the Tax Assessor has confirmed that Block 93, Lot 64.1 (Assessed value of \$3,800) should have been deleted as a separate line item for the 2010 tax list

**WHEREAS**, the homeowner of 44 Victory Court is seeking a refund for the 2010 amount paid on said lot

**NOW, THEREFORE, BE IT RESOLVED** by the Borough Council of the Borough of Metuchen, that the Tax Collector be and is hereby authorized to cancel said taxes and to issue a refund in the amount of \$ 187.95.

On a motion by Council President Cammarano and Second by Councilwoman Rubin Resolution R2011-75 be approved

**Roll Call Vote**

**Ayes: Councilpersons Lease, Muldoon, Rasmussen, Rubin, Wallace, Council President Cammarano**

**Nays: None**

**Motion Carried.**

**RESOLUTION NO. 2011-75**

**INTRODUCTION OF MUNICIPAL BUDGET  
SEE ATTACHED**

Borough Administrator Boerth explained the budget presented was \$224,936 under the 2% tax levy CAP instituted this year by the State. The total amount to be raised by taxation is \$10,461,252.55. This amount equals a 3.8% increase or a 3.9% tax point increase over 2010. The increase on an average home assessed at \$189,946 is \$74.84. This increase is the municipal portion increase only.

Borough Clerk Harris read the mandatory statement.

**NEW BUSINESS AGENDA**

On a motion by Council President Cammarano and seconded by Councilwoman Rubin, with all in favor the bill list in the amount of \$2,974,694.02 was approved.

**APPOINTMENTS**

Mayor Vahalla appointed Munsamy Govinder to the Development Commission with a term to expire on 1/1/12.

Mayor Vahalla appointed Daniel Hirsh to the Environmental Commission with a term to expire on 1/1/12.

## **INTRODUCTION OF ORDINANCE**

On a motion by Council President Cammarano and seconded by Councilwoman Rubin, with all in favor Ordinance 2011-4 was introduced and taken up upon first reading.

Borough Clerk Harris read the Ordinance by title only.

On a motion by Council President Cammarano and second by Councilman Lease, with all in favor Ordinance 2011-4 be passed on first reading, published according to law and a public hearing date set for April 4.

### **Roll Call Vote**

**Ayes: Councilpersons Lease, Muldoon, Rasmussen, Rubin, Wallace, Council President Cammarano**

**Nays: None**

**Motion Carried.**

## **BOROUGH OF METUCHEN ORDINANCE NO. 2011-4**

### **AN ORDINANCE AMENDING THE LAND DEVELOPMENT ORDINANCE OF THE BOROUGH OF METUCHEN, CHAPTER 110, TO CREATE ARTICLE 68 – RIPARIAN ZONE.**

**BE IT ORDAINED** by the Mayor and Council of the Borough of Metuchen that the Land Development Code of the Borough of Metuchen be amended as follows:

**SECTION 1.** Chapter 110 of the Code of the Borough of Metuchen is hereby amended to **INCLUDE** the entire Section **110-ARTICLE 68 – RIPARIAN ZONE**

- I. Intent and Purpose**
- II. Statutory Authority**
- III. Definitions**
- IV. Establishment of Riparian Zones**
- V. Uses Permitted in Riparian Zones**
- VI. Performance Standards for Riparian Zones**
- VII. Nonconforming Structures and Uses in Riparian Zones**
- VIII. Uses Prohibited in Riparian Zones**
- IX. Activities Permitted in Riparian Zones in the Case of No Reasonable or Prudent Alternative or Extreme Hardship**
- X. Riparian Zone Management Plan**
- XI. Boundary Interpretation, Appeals Procedures, Inspections, Conflicts, Severability**
- XII. Enforcement**
- XIII. Effective Date**

*[The requirements set forth in this Ordinance are consistent with those found in the State of New Jersey's Stormwater Management Rules, N.J.A.C. 7:8, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13 and the Water Quality Management Planning Rules, N.J.A.C. 7:15.]*

### **I. Intent and Purpose**

The governing body of the Borough of Metuchen finds that riparian lands adjacent to streams, lakes, or other surface water bodies that are adequately vegetated provide an important environmental protection and water resource management benefit. It is necessary to protect and maintain the beneficial character of riparian areas by implementing specifications for the establishment, protection, and maintenance of vegetation along the surface water bodies within the jurisdiction of the Borough of Metuchen, consistent

with the interest of landowners in making reasonable economic use of parcels of land that include such designated areas. The purpose of this Ordinance is to designate riparian zones, and to provide for land use regulation therein in order to protect the streams, lakes, and other surface water bodies of the Borough of Metuchen; to protect the water quality of watercourses, lakes, and other significant water resources within the Borough of Metuchen; to protect the riparian and aquatic ecosystems of the Borough of Metuchen; to provide for the environmentally sound use of the land resources of the Borough of Metuchen, and to complement existing state, regional, county and municipal stream corridor protection and management regulations and initiatives.

The specific purposes and intent of this Ordinance are to:

- A. Restore and maintain the chemical, physical, and biological integrity of the water resources of the Borough of Metuchen;
- B. Prevent excessive nutrients, sediment, and organic matter, as well as biocides and other pollutants, from reaching surface waters by optimizing opportunities for filtration, deposition, absorption, adsorption, plant uptake, biodegradation, and denitrification, which occur when stormwater runoff is conveyed through vegetated buffers as stable, distributed flow prior to reaching receiving waters;
- C. Provide for shading of the aquatic environment so as to moderate temperatures, retain more dissolved oxygen, and support a healthy assemblage of aquatic flora and fauna;
- D. Provide for the availability of natural organic matter (leaves and twigs) and large woody debris (trees and limbs) that provide food and habitat for aquatic organisms (insects, amphibians, crustaceans, and small fish), which are essential to maintain the food chain;
- E. Increase stream bank stability and maintain natural fluvial geomorphology of the stream system, thereby reducing stream bank erosion and sedimentation and protecting habitat for aquatic organisms;
- F. Maintain base flows in streams and moisture in wetlands;
- G. Control downstream flooding; and
- H. Conserve the natural features important to land and water resources, e.g., headwater areas, ground water recharge zones, floodways, floodplains, springs, streams, wetlands, woodlands, and prime wildlife habitats.

## **II. Statutory Authority**

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

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

### **III. Definitions**

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

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

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

**Category One Waters or C1 Waters** shall have the meaning ascribed to this term by the Surface Water Quality Standards, N.J.A.C. 7:9B, for purposes of implementing the antidegradation policies set forth in those standards, for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, and other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources.

**Category Two Waters or C2 Waters** means those waters not designated as Outstanding Natural Resource waters or Category One Waters in the Surface Water Quality Standards, N.J.A.C. 7:9B, for purposes of implementing the antidegradation policies set forth in those standards.

**Floodway** shall have the meaning ascribed to this term by the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and regulations promulgated there under published at N.J.A.C. 7:13 et seq., and any supplementary or successor legislation and regulations from time to time enacted or promulgated.

**Intermittent Stream** means a surface water body with definite bed and banks in which there is not a permanent flow of water and shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrography coverages or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Stormwater Management Rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys.

**Lake, pond or reservoir** means any surface water body shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrography coverages or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys; that is an impoundment, whether naturally occurring or created in whole or in part by the building of structures for the retention of surface water. This excludes sedimentation control and stormwater retention/detention basins and ponds designed for treatment of wastewater.

**Perennial stream** means a surface water body that flows continuously throughout the year in most years and shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrography coverages or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys.

**Riparian Zone** means the land and vegetation within and directly adjacent to all surface water bodies including, but not limited to lakes, ponds, reservoirs, perennial and intermittent streams, up to and including their point of origin, such as seeps and springs, as shown on the New Jersey Department of Environmental Protection's GIS hydrography coverages or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h), C1

waters as shown on the USGS quadrangle map or in the County Soil Surveys.

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

**Special Water Resource Protection Area or SWRPA** means a 300 foot area provided on each side of a surface water body designated as a C1 water or tributary to a C1 water that is a perennial stream, intermittent stream, lake, pond, or reservoir, as defined herein and shown on the USGS quadrangle map or in the County Soil Surveys within the associated Hydrologic Unit Code (HUC) 14 drainage, pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h).

**Surface water body(ies)** means any perennial stream, intermittent stream, lake, pond, or reservoir, as defined herein. In addition, any regulated water under the Flood Hazard Area Control Act rules at N.J.A.C. 7:13-2.2, or State Open Waters identified in a Letter of Interpretation issued under the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-3 by the New Jersey Department of Environmental Protection Division of Land Use Regulation shall also be considered surface water bodies.

**Threatened or endangered species** means a species identified pursuant to the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., the Endangered Species Act of 1973, 16 U.S.C. §§1531 et seq. or the Endangered Plant Species List, N.J.A.C. 7:5C-5.1, and any subsequent amendments thereto.

**Trout maintenance water** means a section of water designated as trout maintenance in the New Jersey Department of Environmental Protection's Surface Water Quality Standards at N.J.A.C. 7:9B.

**Trout production water** means a section of water identified as trout production in the New Jersey Department of Environmental Protection's Surface Water Quality Standards at N.J.A.C. 7:9B.

#### **IV. Establishment of Riparian Zones**

- A. Riparian zones adjacent to all surface water bodies shall be protected from avoidable disturbance and shall be delineated as follows:
1. The riparian zone shall be 300 feet wide along both sides of any Category One water (C1 water), and all upstream tributaries situated within the same HUC 14 watershed. This includes Special Water Resource Protection Area's or SWRPA's as identified herein and shown on the USGS quadrangle map or in the County Soil Surveys within the associated HUC 14 drainage, pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h).
  2. The riparian zone shall be 150 feet wide along both sides of the following waters not designated as C1 waters:
    - a. Any trout production water and all upstream waters (including tributaries);
    - b. Any trout maintenance water and all upstream waters (including tributaries) within one linear mile as measured along the length of the surface water body;
    - c. Any segment of a water flowing through an area that contains documented habitat for a threatened or endangered species of plant or animal, which is critically dependent on the surface water body for survival, and all upstream waters (including tributaries) within **one** linear mile as measured along the length of the surface water body; and
    - d. Any segment of a surface water body flowing through an area that contains acid producing soils.

3. For all other surface water bodies, a riparian zone of 50 feet wide shall be maintained along both sides of the water.
- B. The portion of the riparian zone that lies outside of a surface water body is measured landward from the top of bank. If a discernible bank is not present along a surface water body, the portion of the riparian zone outside the surface water body is measured landward as follows:
1. Along a linear fluvial or tidal water, such as a stream or swale, the riparian zone is measured landward of the feature's centerline;
  2. Along a non-linear fluvial water, such as a lake or pond, the riparian zone is measured landward of the normal water surface limit;
  3. Along a non-linear tidal water, such as a bay or inlet, the riparian zone is measured landward of the mean high water line; and
  4. Along an amorphously-shaped feature such as a wetland complex, through which water flows but which lacks a definable channel, the riparian zone is measured landward of the feature's centerline.

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

For areas adjacent to surface water bodies for which the floodway has been delineated per the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-3 or the State's adopted floodway delineations, the riparian zone shall cover the entire floodway area, or the area described in Section IV.A.1. or IV.A.2. above, whichever area has the greatest extent. Requests for alterations to the adopted delineations can be provided to the New Jersey Department of Environmental Protection for consideration if site specific information is available.

- C. A riparian zone is an overlay to the existing zoning districts. The provisions of the underlying district shall remain in full force except where the provisions of the riparian zone differ from the provisions of the underlying district, in which case the provision that is more restrictive shall apply. These provisions apply to land disturbances resulting from or related to any activity or use requiring application for any of the following permits or approvals:

- Building permit
- Zoning variance
- Special exception
- Conditional use
- Subdivision/land development approval

- D. A map of the riparian zones of the entire municipality of the Borough of Metuchen, including all land and water areas within its boundaries, which designates surface water bodies, is included as part of this Ordinance, and is appended as Figure #1. Maps of the municipality on which these designations have been overlain shall be on file and maintained by the office of the Clerk of the Borough of Metuchen. This map conforms to all applicable laws, rules and regulations applicable to the creation, modification and promulgation of zoning maps.

- E. It shall be the duty of the Engineer of the Borough of Metuchen, every second year after the adoption of this Ordinance, to propose modifications to the map delineating riparian zones required by any naturally occurring or permitted change in the location of a defining feature of a

surface water body occurring after the initial adoption of the riparian zone map, to record all modifications to the riparian zone map required by decisions or appeals under Section XI., and by changes made by the New Jersey Department of Environmental Protection in surface water classifications or floodway delineations.

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

G. Exemptions

Instead of the riparian zone protection requirements above, the applicant must demonstrate compliance with one of the following:

1. The proposed project or activity is not in the riparian zone established at Section IV.A. above;
2. The proposed disturbance in a riparian zone is for a linear development with no feasible alternative route. If the riparian zone is associated with Category One waters, the linear development must also meet the requirements for Special Water Resource Protection Areas under the Stormwater Management Rules at N.J.A.C. 7:8-5.5(h);
3. The proposed disturbance in a riparian zone is in accordance with a stream corridor restoration or stream bank stabilization plan or project approved by the New Jersey Department of Environmental Protection;
4. The proposed disturbance of a riparian zone is necessary to provide for public pedestrian access or water dependent recreation that meets the requirements of the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, or the Coastal Zone Management Rules, N.J.A.C. 7:7E;
5. The proposed disturbance of a riparian zone is required for the remediation of hazardous substances performed with New Jersey Department of Environmental Protection or Federal oversight pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq. or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§9601 et seq.;
6. The proposed disturbance is for redevelopment that does not exceed the limits of existing impervious surfaces;
7. The proposed disturbance would prevent extraordinary hardship on the property owner peculiar to the property; or prevent extraordinary hardship, provided the hardship was not created by the property owner, that would not permit a minimum economically viable use of the property based upon reasonable investment; and/or
8. Demonstrate through site plans depicting proposed development and topography that new disturbance is not located in areas with a 20 percent or greater slope, except as allowed under H.6. and H.7. above.

V. **Uses Permitted in Riparian Zones**

- A. For riparian zones in Category One waters (C1 waters), permitted uses are governed by the Stormwater Management Rules at N.J.A.C. 7:8-5.5(h) and the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, unless otherwise exempt.
- B. Any other riparian zone area shall remain in a natural condition or, if in a disturbed condition, including agricultural activities, at the time of adoption of this Ordinance may be restored to a natural condition. There shall be no clearing or cutting of trees and brush, except for removal of dead vegetation and pruning for reasons of public safety or for the replacement of invasive species with indigenous species. There shall be no altering of watercourses, dumping of trash, soil, dirt, fill, vegetative or other debris, regrading or construction. The following uses are permitted either by right or after review and approval by the municipality in riparian zones. No new construction, development, use, activity, encroachment, or structure shall take place in a riparian zone, except as specifically authorized in this Section. The following uses shall be permitted within a riparian zone:
  - 1. Open space uses that are primarily passive in character shall be permitted by right to extend into a riparian zone, provided near stream vegetation is preserved. These uses do not require approval by the Zoning Enforcement Officer or compliance with an approved Riparian Zone Management Plan. Such uses include wildlife sanctuaries, nature preserves, forest preserves, fishing areas, game farms, fish hatcheries and fishing reserves, operated for the protection and propagation of wildlife, but excluding structures. Such uses also include passive recreation areas of public and private parklands, including unpaved hiking, bicycle and bridle trails, provided that said trail have been stabilized with pervious materials.
  - 2. Fences, for which a permit has been issued by the Construction Code Office, to the extent required by applicable law, rule or regulation.
  - 3. Crossing by farm vehicles and livestock, recreational trails, roads, railroads, storm water lines, sanitary sewer lines, water lines and public utility transmission lines, provided that the land disturbance is the minimum required to accomplish the permitted use, subject to approval by the Zoning Enforcement Officer, provided that any applicable State permits are required, and provided that any disturbance is offset by buffer improvements in compliance with an approved Riparian Zone Management Plan, as described in Section X, and that the area of the crossing is stabilized against significant erosion due to its use as a crossing.
  - 4. Stream bank stabilization or riparian reforestation, which conform to the guidelines of an approved Riparian Zone Management Plan, as described in Section X, or wetlands mitigation projects that have been approved by the New Jersey Department of Environmental Protection, subject to approval by the Zoning Enforcement Officer and subject to compliance with an approved Riparian Zone Management Plan.

**VI. Performance Standards for Riparian Zones**

- A. All encroachments proposed into riparian zones in C1 waters shall comply with the requirements of the Stormwater Management Rule at N.J.A.C. 7:8-5.5(h) and the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, and shall be subject to review and approval by the New Jersey Department of Environmental Protection, unless exempt.
- B. For all other riparian zones, the following conditions shall apply:
  - 1. All new major and minor subdivisions and site plans shall be designed to provide sufficient areas outside of the riparian zone to accommodate primary structures, any

- normal accessory uses appurtenant thereto, as well as all planned lawn areas.
2. Portions of lots within the riparian zone must be permanently restricted by deed or conservation easement held by the Borough of Metuchen, its agent, or another public or private land conservation organization which has the ability to provide adequate protection to prevent adverse impacts within the riparian zone. A complete copy of the recorded conservation restriction that clearly identifies the deed book and pages where it has been recorded in the office of the clerk of the applicable county or the registrar of deeds and mortgages of the applicable county must be submitted to the municipality. The applicant shall not commence with the project or activity prior to making this submittal and receiving actual approval of the plan modification and receipt of any applicable permits from the New Jersey Department of Environmental Protection. The recorded conservation restriction shall be in the form approved by the municipality and shall run with the land and be binding upon the property owner and the successors in interest in the property or in any part thereof. The conservation restriction may include language reserving the right to make *de minimus* changes to accommodate necessary regulatory approvals upon the written consent of the municipality, provided such changes are otherwise consistent with the purpose and intent of the conservation restriction. The recorded conservation restriction shall, at a minimum, include:
    - a. A written narrative of the authorized regulated activity, date of issuance, and date of expiration, and the conservation restriction that, in addition, includes all of the prohibitions set forth at N.J.S.A. 13:8B-2b(1) through (7);
    - b. Survey plans for the property as a whole and where applicable, for any additional properties subject to the conservation restrictions. Such survey plans shall be submitted on the surveyor's letterhead, signed and sealed by the surveyor, and shall include metes and bounds descriptions of the property, the site, and the areas subject to the conservation restriction in New Jersey State Plane Coordinates, North American Datum 1983, and shall depict the boundaries of the site and all areas subject to the conservation restriction as marked with flags or stakes onsite. All such survey plans shall be submitted on paper and in digital CAD or GIS file on a media and format defined by the Borough of Metuchen. The flags or stakes shall be numbered and identified on the survey plan; and
    - c. A copy or copies of deeds for the property as a whole that indicate the deed book and pages where it has been recorded in the office of the Middlesex County Clerk or the Middlesex County Registrar of Deeds and Mortgages.
  3. Any lands proposed for development which include all or a portion of a riparian zone shall as a condition of any major subdivision or major site plan approval, provide for the vegetation or revegetation of any portions of the riparian zone which are not vegetated at the time of the application or which were disturbed by prior land uses, including for agricultural use. Said vegetation plan shall utilize native and non-invasive tree and plant species to the maximum extent practicable in accordance with an approved Riparian Zone Management Plan, described in Section X.
  4. For building lots which exist as of the date of adoption of this ordinance, but for which a building permit or a preliminary site plan approval has not been obtained or is no longer valid, the required minimum front, side, and rear setbacks may extend into the riparian

zone, provided that a deed restriction and/or conservation easement is applied which prohibits clearing or construction in the riparian zone.

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

#### **VII. Nonconforming Structures and Uses in Riparian Zones**

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

- A. Legally existing but nonconforming structures or uses may be continued.
- B. Any proposed enlargement or expansion of the building footprint within the riparian zone of a C1 water shall comply with the standards in the Stormwater Management Rules at N.J.A.C. 7:8-5.5(h) and the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.
- C. For all other riparian zones:
  1. Encroachment within the riparian zone shall only be allowed where previous development or disturbance has occurred and shall be in conformance with the Stormwater Management Rules, N.J.A.C. 7:8, and the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.
  2. Existing impervious cover shall not be increased within the riparian zone as a result of encroachments where previous development or disturbances have occurred.
  3. Discontinued nonconforming uses may be resumed any time within one year from such discontinuance but not thereafter when showing clear indications of abandonment. No change or resumption shall be permitted that is more detrimental to the riparian zone, as measured against the intent and purpose under Section I., than the existing or former nonconforming use. This one-year time frame shall not apply to agricultural uses that are following prescribed Best Management Practices for crop rotation. However, resumption of agricultural uses may be strictly to the extent of disturbance existing at the time of adoption of this ordinance.

#### **VI. Uses Prohibited in Riparian Zones**

- A. Any use within a riparian zone of a C1 water shall comply with the standards in the Stormwater Management Rules at N.J.A.C. 7:8-5.5(h) and the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.
- B. For other riparian zones, any use or activity not specifically authorized in Section V. or Section VII. shall be prohibited within the riparian zone. By way of example, the following activities and facilities are prohibited:
  1. Removal or clear-cutting of trees and other vegetation or soil disturbance such as grading, except for selective vegetation removal for the purpose of stream or riparian area stabilization or restoration projects that require vegetation removal or grading prior to implementation.
  2. Storage of any hazardous or noxious materials.

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

**IX. Activities Permitted in Riparian Zones in the Case of No Reasonable or Prudent Alternative or Extreme Hardship**

- A. For riparian zones in C1 waters, requests for exemptions must be authorized by the New Jersey Department of Environmental Protection, as per the Stormwater Management Rules at N.J.A.C. 7:8-5.5(h) and the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.
- B. For other riparian zones, hardship variances may be granted by the Zoning Board of Adjustment in cases of a preexisting lot (existing at the time of adoption of this Ordinance) when there is insufficient room outside the riparian zone for uses permitted by the underlying zoning and there is no other reasonable or prudent alternative to placement in the riparian zone, including obtaining variances from setback or other requirements that would allow conformance with the riparian zone requirements, and provided the following demonstrations are made:
  1. An applicant shall be deemed to have established the existence of an extreme economic hardship, if the subject property is not capable of yielding a reasonable economic return if its present use is continued or if it is developed in accordance with provisions of this Ordinance and that this inability to yield a reasonable economic return results from unique circumstances peculiar to the subject property which:
    - a. Do not apply to or affect other property in the immediate vicinity.
    - b. Relate to or arise out of the characteristics of the subject property because of the particular physical surroundings, shape or topographical conditions of the property involved, rather than the personal situations of the applicant; and are not the result of any action or inaction by the applicant or the owner or his predecessors in title.
    - c. The necessity of acquiring additional land to locate development outside the riparian zone shall not be considered an economic hardship unless the applicant can demonstrate that there is no adjacent land that is reasonably available or could be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity.
  2. An applicant shall be deemed to have established compelling public need if the applicant demonstrates, based on specific facts that one of the following applies:
    - a. The proposed project will serve an essential public health or safety need;
    - b. The proposed use is required to serve an existing public health or safety need; or
    - c. There is no alternative available to meet the established public health or safety

need.

3. A variance can only be granted if it is shown that the activity is in conformance with all applicable local, State and Federal regulations, including, but not limited to, the Stormwater Management Rules, N.J.A.C. 7:8, and the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, and that the exception granted is the minimum relief necessary to relieve the hardship.

- C. If such an exception is granted, the applicant shall rehabilitate an environmentally degraded riparian zone area within or adjacent to the same site, and at least equivalent in size to the riparian zone reduction permitted, or, if not possible, rehabilitate or expand a riparian zone area at least equivalent in size within a nearby site and, if available, within the same watershed. Rehabilitation shall include reforestation, stream bank stabilization and removal of debris, in accordance with a Riparian Zone Management Plan, as described in Section X below.

**X. Riparian Zone Management Plan**

- A. Within any riparian zone, no construction, development, use, activity, or encroachment shall be permitted unless the effects of such development are accompanied by preparation, approval, and implementation of a Riparian Zone Management Plan.
- B. The landowner, applicant, or developer shall submit to the Borough Engineer, or its appointed representative, a Riparian Zone Management Plan prepared by an environmental professional, professional engineer or other qualified professional which fully evaluates the effects of any proposed uses on the riparian zone. The Riparian Zone Management Plan shall identify the existing conditions including:
  1. Existing vegetation;
  2. Field delineated surface water bodies;
  3. Field delineated wetlands;
  4. The 100-year floodplain;
  5. Flood Hazard Areas, including floodway and flood fringe areas, as delineated by the New Jersey Department of Environmental Protection;
  6. Soil classifications as found on Soil Surveys;
  7. Existing subdrainage areas of site with HUC 14 designations;
  8. Slopes in each subdrainage area segmented into sections of slopes less than 15%; above 15% but less than 20%; and steep slopes greater than 20%.The proposed plan shall describe all proposed uses/activities, and fully evaluate the effects of all proposed uses/activities in a riparian zone, and all proposed management techniques, including proposed vegetation and any other measures necessary to offset disturbances to the riparian zone. A discussion of activities proposed as well as management techniques proposed to offset disturbances and/or enhance the site to improve the riparian zone's ability to function effectively as a riparian zone shall also be included with the Riparian Zone Management Plan submittal to the Borough of Metuchen.
- C. The Plan shall be reviewed and must be approved by the Engineer of the Borough of Metuchen, in consultation with the Environmental Commission, as part of the subdivision and land development process.
- D. The Riparian Zone Management Plan must include management provisions in narrative and/or

graphic form specifying:

1. The manner in which the area within the riparian zone will be owned and by whom it will be managed and maintained.
  2. The conservation and/or land management techniques and practices that will be used to conserve and protect the riparian zone, as applicable.
  3. The professional and personnel resources that are expected to be necessary, in order to maintain and manage the riparian zone.
  4. A revegetation plan, if applicable, that includes: three (3) layers of vegetation, including herbaceous plants that serve as ground cover, understory shrubs, and trees that when fully mature, will form an overhead canopy. Vegetation selected must be native, non-invasive species, and consistent with the soil, slope and moisture conditions of the site. The revegetation plan shall be prepared by a qualified environmental professional, landscape architect, or professional engineer, and shall be subject to the approval of the Borough Engineer, in consultation with the Environmental Commission. Dominant vegetation in the Riparian Zone Management Plan shall consist of plant species that are suited to the riparian zone environment. The Borough Engineer may require species suitability to be verified by qualified experts from the Soil Conservation District, Natural Resources Conservation Service, New Jersey Department of Environmental Protection, US Fish and Wildlife Service and/or State or Federal forest agencies.
- E. A Riparian Zone Management Plan is not required where the riparian zone is not being disturbed and conservation easements/deed restrictions are applied to ensure there will be no future clearing or disturbance of the riparian zone.
- F. Performance of the Riparian Zone Management Plan shall be guaranteed for two (2) years by a surety, such as a bond, cash or letter of credit, which shall be provided to the Borough of Metuchen prior to the Borough of Metuchen issuing any permits or approving any uses relating to the applicable use or activity.

**XI. Boundary Interpretation, Appeals Procedures, Inspections, Conflicts, Severability**

- A. When a landowner or applicant disputes the boundaries of a riparian zone, or the defined bank-full flow or level, the landowner or applicant shall submit evidence to the Borough Engineer that describes the riparian zone, presents the landowner or applicant's proposed riparian zone delineation, and presents all justification for the proposed boundary change, including but not limited to, a verification issued under the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-6, or an approval from the New Jersey Department of Environmental Protection to encroach within the Special Water Resource Protection Area (SWRPA) of a C1 water pursuant to the Stormwater Management Rules at N.J.A.C. 7:8-5.5h)1ii.
- B. Within 45 days of a complete submission of Section XI.A above, the Borough Engineer, or appointed representative, shall evaluate all material submitted and shall make a written determination, a copy of which shall be submitted to Zoning Officer and the landowner or applicant. Failure to act within the 45-day period shall not be interpreted to be an approval of the proposed boundary change.
- C. Any party aggrieved by any such determination or other decision or determination under Section XI.B may appeal to the Zoning Officer under the provisions of this Ordinance. The party contesting the location of the riparian zone boundary shall have the burden of proof in case of any such appeal.
- D. Any party aggrieved by any determination or decision of the Borough Engineer or Zoning Officer under this Ordinance may appeal to the Mayor and Council of the Borough of Metuchen.

The party contesting the determination or decision shall have the burden of proof in case of any such appeal.

E. Inspections:

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

F. Conflicts: All other Ordinances, parts of Ordinances, or other local requirements that are inconsistent or in conflict with this Ordinance are hereby superseded to the extent of any inconsistency or conflict, and the provisions of this Ordinance apply.

G. Severability:

1. Interpretation: This Ordinance shall be so construed as not to conflict with any provision of New Jersey or Federal law.
2. Notwithstanding that any provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, all remaining provisions of the Ordinance shall continue to be of full force and effect.
3. The provisions of this Ordinance shall be cumulative with, and not in substitution for, all other applicable zoning, planning and land use regulations.

**XII. Enforcement**

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

1. Any person who violates any provision of this chapter shall be fined for each offense not more than \$100.00.
2. Any person who willfully or knowingly violates any provision of this chapter shall be fined for each offense a sum of not less than \$100 and not more than \$1,000.00
3. Each day of violation of any provision of this chapter shall constitute a separate offense.

**Section 2. Effective Date**

This ordinance shall become effective upon publication after final adoption.  
Mayor Vahalla opened the meeting to public comment on said ordinance only.  
Hearing no one wishing to speak the Mayor closed the public comment on said ordinance.

**PUBLIC COMMENT**

Mayor Vahalla opened the meeting for public comment.  
Hearing no one wishing to speak the Mayor closed the public comment portion.

**ADJOURNMENT**

On a motion by Council President Cammarano, seconded by Councilman Lease with all in favor the meeting was adjourned at 8:31PM.

Respectfully Submitted:

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Kathryn Harris, RMC

