

**MINUTES OF THE HARDYSTON TOWNSHIP COUNCIL MEETING HELD ON MAY 15, 2012**

The meeting was called to order by Mayor Miller at approximately 7:00 P.M. with the opening statement that the meeting had been duly advertised and met all the requirements of the Sunshine Law. Also present were: Deputy Mayor Hamilton, Councilman Kula, Councilman Cicerale, Manager Marianne Smith, and Township Attorney Fred Semrau. Councilman Ross was absent from this meeting.

**SALUTE THE FLAG**

**CONSENT AGENDA: ALL MATTERS LISTED BELOW ARE CONSIDERED TO BE ROUTINE IN NATURE AND WILL BE ENACTED BY ONE MOTION. THERE WILL BE NO SEPARATE DISCUSSION OF THE ITEMS. IF ANY DISCUSSION IS DESIRED, THAT PARTICULAR ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND WILL BE CONSIDERED SEPARATELY.**

**Monthly Reports:**

1. Municipal Clerk Report – April 2012
2. Tax Collector Report – April 2012
3. Construction Certificate Activity Report – April 2012
4. Construction Permit Activity Report – Hardyston – April 2012
5. Construction Permit Activity Report – Hamburg – April 2012
6. Construction Permit Activity Report – Franklin – April 2012
7. Construction Permit Activity Report – Newton – April 2012
8. Construction Permit Activity Report – Sussex – April 2012
9. HTMUA – Minutes of 4/2/12
10. Sussex County Health Department Report – April 2012
11. Planning Board – Minutes of 3/22/12
12. Zoning Board – Minutes of 3/1/12
13. Municipal Court Report – April 2012
14. Police Department Report – April 2012

**Minutes:**

1. Regular Minutes of 4/24/12
2. Regular Minutes of 5/1/12

**Agreements/Applications/Licenses:**

1. Raffles – NJ State Organization of Cystic Fibrosis
2. Raffle – Wallkill Valley Booster Club

A motion was made by Kula to approve the consent agenda as presented, seconded by Cicerale. All in favor. Motion carried.

**ORDINANCES:**

**1st READING: None**

**ORDINANCES:**

**2<sup>nd</sup> READING: 2012-06**

**AN ORDINANCE APPROPRIATING THE TOTAL SUM OF \$415,000.00 FROM GENERAL CAPITAL IMPROVEMENT FUND FOR FUNDING VARIOUS CAPITAL IMPROVEMENTS OR PURPOSES BY THE TOWNSHIP OF HARDYSTON, IN THE COUNTY OF SUSSEX, NEW JERSEY**

**BE IT ORDAINED AND ENACTED** by the Mayor and Council of the Township of Hardyston, County of Sussex, New Jersey, as follows:

**Section 1:** The sum of Four hundred fifteen thousand dollars (\$415,000.00) to be utilized out of the General Capital Improvement Fund, is hereby appropriated for the following purpose:

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For Various Capital Improvements or Purposes for the Township of Hardyston.

**Section 2:** In connection with the amount authorized in Section 1 hereof, the Township makes the following determination:

(a) The purpose described in Section 1 hereof is not a Current Expense and is an improvement, which the Township of Hardyston may lawfully make as general improvement.

(b) The period of usefulness of the purpose described in section 1 hereof is not in the limitations of the said Local Bond Law and according to the aggregate reasonable life thereof is five (5) years.

**Section 3:** All ordinances or parts of ordinances, which are inconsistent with the terms of this ordinance, be and the same is hereby repealed on to the extent of their inconsistency:

**Section 4:** This ordinance becomes effective immediately upon final passage, approval, and publication as provided by law.

A motion was made and seconded to open the meeting to the public. All in favor. Motion carried. No public comment. A motion was made and seconded to close the meeting to the public. All in favor. Motion carried. A motion was made by Hamilton to approve Ordinance 2012-06 on second reading, seconded by Kula. All in favor. Motion carried.

**NEW BUSINESS:**

- A. Resolution #26-12 – Resolution certifying to the Sussex County Board of Chosen Freeholders that the Township of Hardyston recognizes and approves the Hardyston First Aid Squad’s efforts to seek financial assistance from the County of Sussex

**RESOLUTION #26-12**

**RESOLUTION CERTIFYING TO THE SUSSEX COUNTY BOARD OF CHOSEN FREEHOLDERS THAT THE TOWNSHIP OF HARDYSTON RECOGNIZES AND APPROVES THE HARDYSTON FIRST AID SQUAD’S EFFORTS TO SEEK FINANCIAL ASSISTANCE FROM THE COUNTY OF SUSSEX**

WHEREAS, the County of Sussex has, for several years, provided financial assistance to Emergency Rescue and First Aid Squads serving the residents of the County; and

WHEREAS, on February 28, 2001 the Sussex County Board of Chosen Freeholders adopted a resolution requiring municipalities to certify that First Aid Squad’s serving their community are approved to seek financial assistance from the County of Sussex; and

WHEREAS, the volunteers of the Hardyston Township First Aid Squad have for many years provided emergency medical and rescue services to Township residents, businesses and visitors.

NOW THEREFORE BE IT RESOLVED by the Hardyston Township Council that it hereby certifies its approval of the Hardyston Township First Aid Squad seeking financial assistance from the County of Sussex.

A motion was made by Kula to approve the resolution as presented, seconded by Hamilton. All in favor. Motion carried.

- B. Resolution #27-12 – Transportation Services – County of Sussex

**RESOLUTION #27-12**

BE IT RESOLVED by the Township Council of the Township of Hardyston that the execution of the following agreement is hereby authorized:

1. 2012 Transportation Services Contract – County of Sussex

A motion was made by Hamilton to approve the resolution as presented, seconded by Cicerale. All in favor. Motion carried.

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- C. Resolution #28-12 – TWA Application – Consent By Governing Body –Single-Family Septic System for 62 Willow Trail – Lake Gerard

**RESOLUTION #28-12**

BE IT RESOLVED by the Township Council of the Township of Hardyston that the execution of the following is hereby authorized:

- NJDEP Treatment Works Application – Consent By Governing Body - Harriet Gerard – Single-Family Septic System for 62 Willow Trail – Lake Gerard

A motion was made by Kula to approve the resolution as presented, seconded by Hamilton. All in favor. Motion carried.

- D. Resolution #29-12 – A Resolution Opposing The Inclusion Of The Hardyston Elementary School (Block 70, Lot 13) And The Former State Of New Jersey Armory And Military Training Center (Block 74, Lot 15) In The Borough Of Franklin’s Proposed Area In Need Of Redevelopment Known As Area E

**RESOLUTION #29-12**

**A RESOLUTION OPPOSING THE INCLUSION OF THE HARDYSTON ELEMENTARY SCHOOL (BLOCK 70, LOT 13) AND THE FORMER STATE OF NEW JERSEY ARMORY AND MILITARY TRAINING CENTER (BLOCK 74, LOT 15) IN THE BOROUGH OF FRANKLIN’S PROPOSED AREA IN NEED OF REDEVELOPMENT KNOWN AS AREA E**

**WHEREAS**, the Borough of Franklin has included the Hardyston Township Elementary School located at Route 23 (Block 70, Lot 13) and the former State of New Jersey Armory and Military Training Center, which operates as the Hardyston/Franklin Littell Community Center, located at 12 Munsonhurst Road (Block 74, Lot 15) as properties that meet the criteria under the NJ Local Redevelopment and Housing Law (N.J.S.A 40A:12A-5) to be designated as an area in need of redevelopment; and

**WHEREAS**, the State of New Jersey enacted the Local Redevelopment and Housing Law to establish the criteria under which a property can be deemed an area in need of redevelopment; and

**WHEREAS**, the New Jersey Supreme Court in their decision in Gallenthin Realty Development, Inc. v. Borough of Paulsboro 479 NJ 344 (2007) limited the use of eminent domain for the purpose of economic development without clear evidence of additional criteria being satisfied; and

**WHEREAS**, the Gallenthin decision made it clear that the opinion that a property is not fully “productive” cannot be the sole basis for an area in need of redevelopment designation without clear evidence that the condition of deterioration or stagnation of the property is negatively affecting surrounding properties; and

**WHEREAS**, the Court ruled in the Gallenthin case that blight must be consistent with the historical meaning as supported by a clear and convincing record, not just by a net opinion of an expert; and

**WHEREAS**, the professionals hired to prepare the Preliminary Investigation regarding the designation of the Hardyston Elementary School cited the unusual circumstances for why Hardyston has located the elementary school facility in another municipality, the fact that the Board of Education does not pay taxes on what is considered an otherwise valuable commercial property, and the utilization of prime commercial acreage for a tax exempt public purpose as the justification for meeting the provisions of criterion “e” under the Local Redevelopment and Housing Law; and

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**WHEREAS**, the Hardyston Elementary School serves a vital public purpose with an enrollment of approximately 479 students; and

**WHEREAS**, the Hardyston Township Board of Education over the last ten years has invested over 3 million dollars in capital improvements to the building and grounds in order to modernize the facility and provide a quality learning environment for the students they are obligated to serve; and

**WHEREAS**, despite the geographic size of the Township there is no readily available location within the Township for the Board of Education to relocate the school without significant cost to the taxpayers; and

**WHEREAS**, the Township of Hardyston believes that the compensation that would be provided through the application of eminent domain would not be sufficient to cover the costs associated with relocating the school facility; and

**WHEREAS**, the professionals hired to prepare the Preliminary Investigation regarding the designation of the Littell Community Center have cited the age and condition of the buildings, the tax exempt status, discontinuance of the site as former armory and military training center, and accessibility as the justification for meeting the provisions of criterion “b and d” under the Local Redevelopment and Housing Law; and

**WHEREAS**, the former armory and military training center has been repurposed as a community center that is utilized by both Hardyston Township and Franklin Borough as well as surrounding Wallkill Valley municipalities; and

**WHEREAS**, the Littell Community Center offers numerous activities and programs for all age groups, but most importantly our communities’ youth and senior citizens; and

**WHEREAS**, in the event that the Littell Community Center is lost as a result of the redevelopment designation the cost to build a new facility would not be financially feasible as the facility is leased and the respective municipalities utilizing the facility would not receive the compensation from the condemnation through eminent domain; and

**WHEREAS**, the residents of the municipalities which are served by the Littell Community Center have repeatedly spoken out against the possibility of closing the community center and the importance of providing recreational services to those sections of the population most in need; and

**WHEREAS**, the Township Council of the Township of Hardyston finds that the Hardyston Board of Education property and the Littell Community Center do not meet the criterion necessary to be deemed an area in need of redevelopment pursuant to the New Jersey Local Redevelopment and Housing Law based on the evidence cited above; and

**WHEREAS**, the Township Council finds that Franklin Borough has not satisfied the criteria necessary to use eminent domain for the purpose of economic development as established by the Supreme Court in Gallenthin.

**NOW, THEREFORE BE IT RESOLVED**, that the Mayor and Council of the Township of Hardyston oppose the inclusion of the Hardyston Township Elementary School located at 50 Route 23 (Block 70, Lot 13) and the former State of New Jersey Armory and Military Training Center, which operates as the Hardyston/Franklin Littell Community Center, located at 12 Munsonhurst Road (Block 74, Lot 15) as properties in Franklin Borough’s proposed area in need of redevelopment known as Area E; and

**BE IT FURTHER RESOLVED**, that the Hardyston Township finds that Franklin Borough has failed to meet the constitutional and statutory criterion necessary for including the above referenced properties as an area in need of redevelopment pursuant to the New Jersey Local Redevelopment and Housing Law and the Gallenthin Realty Development, Inc. v. Borough of Paulsboro New Jersey State Supreme Court decision as is evident by the current public purposes

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that both facilities serve, which far outweigh any economic benefit that would be derived from commercial development of either property; and

**BE IT FURTHER RESOLVED**, that a copy of this resolution be forwarded to the Franklin Borough Planning Board, Franklin Borough Mayor and Council, and recorded on the record as part of the public hearing required pursuant to the Local Redevelopment and Housing Law as set forth in N.J.S.A 40A:12A-6.

A motion was made by Kula to approve the resolution as presented, seconded by Cicerale. All in favor. Motion carried.

- E. Appointments - Sussex County Water Quality Management Plan Policy Advisory Committee (PAC)

A motion was made by Kula to appoint Carrine Kaufer as Representative for the Township of Hardyston, seconded by Hamilton. All in favor. Motion carried.

- F. Correspondence

1. Hampton Township
2. Walpack Township
3. Stillwater Township
4. Stillwater Township
5. Stillwater Township
6. Stillwater Township
7. Montague Township
8. Lafayette Township
9. Stillwater Township
10. Franklin Borough
11. Sandyston Township
12. County of Sussex
13. County of Sussex
14. State of NJ
15. State of NJ
16. PK Environmental

A motion was made by Kula to approve the correspondence as presented, seconded by Hamilton. All in favor. Motion carried.

### MANAGERS REPORT:

- **Utility Costs:** Township Manager stated that the Township has been in negotiations with its current third party supplier for electric and final documents will be delivered tomorrow. She stated that it is expected that they will offer pricing on three different models to Hardyston Township as follows: a 1-year contract at the NJ SEM rate of \$.075; a 2-year contract rate of in the neighborhood of \$.078-\$.08 and a 3-year contract locked rate of \$.08-\$.082. She stated that these rates are significantly lower than the Township's current rate, which is \$.098.

A motion was made by Hamilton and seconded by Kula to move forward with the 3-year rate. All in favor. Motion carried.

- **Radio Communications Upgrade:** Township Manager stated that all of the equipment has been installed and Royal Communications is finalizing the testing of the system.
- **Police Department Staffing:** Township Manager stated that interviews were conducted and conditional letters of employment have been issued and the final four candidates are scheduled for the final phases of the hiring process.

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- **5K:** Township Manager stated that final arrangements, plans, registrations, etc., are underway regarding the 5K Race, which is scheduled for June 2, 2012.
- **Community Garden:** Township Manager stated that the DPW staff has nearly completed the construction of both the Charity Garden and the Community Garden. She stated that on Saturday, May 12, 2012, volunteers from Project for Social Services and Pass It Along planted all of the plants and seeds in the Charity Garden. She stated that residents who have registered to “rent” a plot in the Community Garden attended a class that the Township sponsored in partnership with the Rutgers Extension Service to provide guidance relative to “Vegetable Gardening 101”. She stated that the day was very successful and there seems to be a very strong community enthusiasm and support.
- **Tax Collection:** Township Manager stated that the Township has just experienced the first tax quarter where tax payers made their payments within the Hardyston Municipal Building rather than the Franklin Municipal Building. She stated that the response to the change has been very positive and that the rate of tax collection to date is consistent with the past few years at this point in the year.
- **Affordable Housing Trust Fund Monies:** Township Manager stated that at the direction of the Hardyston Township Council at the last Council meeting, the Township has commenced actively looking for homes that will meet the appropriate criteria needed for the Township to purchase approximately 6 homes in order to move forward with its “Write-Down, Buy-Down” program. She stated that moving forward with this program will further the efforts to achieve compliance with the Township’s certified affordable housing plan and also protect the township’s trust fund monies from potential State seizure.
- **In Rem Foreclosures:** Township Manager stated that the Hardyston tax collector has researched a number of old tax liens and has provided the Township Attorney with a list of properties whose Township tax liens exceed two years, making them eligible for in rem foreclosure by the Township unless the current owners satisfy the tax liens. She stated that the Township Attorney will be working on moving forward with the foreclosure process.
- **Franklin Borough Proposed Redevelopment Plan:** Township Manager stated that following extensive review and consultation with the Township’s legal professionals, a resolution opposing the inclusion of the Hardyston Township School and the Littell Community Center in the Borough’s proposed Plan for Redevelopment was placed on tonight’s meeting agenda for review and adoption by the Council this evening. She stated that should the Council choose to proceed, she and Carrine Piccolo-Kaufer will plan to present testimony at the scheduled hearing relative to the Plan on May 21, 2012.
- **Local Tax Appeal Hearings:** Township Manager stated that the Township’s Tax Assessor, Scott Holzhauer and Township Attorney, Fred Semrau are prepared to represent the Township during the local County Tax Board Appeals hearings scheduled for this week.
- **Park Drive Water System/Special Assessment:** Township Manager stated that a three-party agreement between the Township of Hardyston, the HTMUA and the current system owner, Riverdale Quarry, has been approved as to form by the Township of Hardyston and the HTMUA, and is currently under review by the system owner’s attorney.

**BILLS TO BE PAID:** A motion was made by Hamilton to approve the bill list as presented, seconded by Cicerale. All in favor. Motion carried.

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**PUBLIC PORTION:** A motion was made and seconded to open the meeting to the public. All in favor. Motion carried. No public comment. A motion was made and seconded to close the meeting to the public. All in favor. Motion carried.

**ADJOURNMENT:** A motion was made by Hamilton to adjourn at approximately 7:35 p.m., seconded by Kula. All in favor. Motion carried.

Jane Bakalarczyk, RMC/CMC  
Municipal Clerk