

**MINUTES OF THE HARDYSTON TOWNSHIP COUNCIL MEETING HELD ON  
OCTOBER 2, 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 Ross, Councilman Cicerale, Councilman Kula, Manager Marianne Smith, Clerk Jane Bakalarczyk and Township Attorney Fred Semrau of Dorsey & Semrau.

**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.**

**Minutes:**

1. Workshop Minutes of 5/22/12
2. Regular Minutes of 6/12/12
3. Executive Minutes of 6/12/12
4. Regular Minutes of 6/19/12
5. Regular Minutes of 7/3/12
6. Regular Minutes of 7/17/12
7. Executive Minutes of 7/17/12
8. Regular Minutes of 8/7/12
9. Executive Minutes of 8/7/12
10. Regular Minutes of 8/21/12
11. Executive Session 8/21/12

A motion was made by Hamilton to approve the consent agenda as presented, seconded by Kula. All in favor with Ross abstaining on the Regular Minutes of 8/7/12, Executive Minutes of 8/7/12 and Executive Minutes of 8/21/12. Motion carried.

**ORDINANCES:**

**1<sup>st</sup> READING:** None

**ORDINANCES:**

**2<sup>nd</sup> READING:** 2012-09

**AN ORDINANCE OF THE TOWNSHIP OF HARDYSTON,  
COUNTY OF SUSSEX, AND STATE OF NEW JERSEY TO  
AMEND CHAPTER 3, ADMINISTRATION OF  
GOVERNMENT, AND ESTABLISH ARTICLE XVI,  
CRIMINAL HISTORY RECORD BACKGROUND CHECKS  
OF PROSPECTIVE AND CURRENT EMPLOYEES OF THE  
TOWNSHIP OF HARDYSTON, OF THE CODE OF THE  
TOWNSHIP OF HARDYSTON MANDATING CRIMINAL  
HISTORY RECORD BACKGROUND CHECKS FOR ALL  
PROSPECTIVE AND CURRENT EMPLOYEES OF THE  
TOWNSHIP OF HARDYSTON**

**WHEREAS,** the Township of Hardyston desires to conduct criminal history record background checks of its current and prospective employees in order to protect and serve the interests of the residents of the Township of Hardyston.

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**NOW, THEREFORE, BE IT ORDAINED** by the Township Council of the Township of Hardyston, in the County of Sussex, and State of New Jersey, as follows:

**Section 1.** Add to Chapter 3, Administration of Government, Article XVI entitled “Criminal History Record Background Checks of Prospective and Current Employees of the Township of Hardyston” as follows:

**Article XVI. Criminal History Record Background Checks of Prospective and Current Employees of the Township of Hardyston**  
**§ 3-66. Definitions.**

As used in this article, the terms used in this Article herein shall have the meanings set forth as N.J.A.C. 13:59-11 and as indicated below:

**Criminal History Record Information (“CHRI”)**

Information collected by criminal justice agencies concerning persons and stored in the central repository of the New Jersey State Police State Bureau of Identification, the National Crime Information Center or other states’ computerized repositories containing criminal history record information consisting of identifiable descriptions and notations of arrests, indictments, or other formal criminal charges, and any dispositions arising therefrom, including convictions, pending court actions, dismissals, acquittals, sentencing, correctional supervision and release.

**Employees**

All full-time, part-time and seasonal employees of Hardyston Township, except those otherwise addressed by law or contract, or employed by the Hardyston Township Recreation Department as covered under Article VI, “Criminal History Record Background Checks of Employees and Volunteers of Nonprofit Youth-Serving Organizations,” of the Township Code.

**State Bureau of Identification (“SBI”)**

The entity located within the New Jersey State Police responsible for retrieving criminal background information on individuals as requested by state, local or private entities.

**§ 3-67. Criminal history record background check required; costs.**

- A. The Township of Hardyston requires that all prospective and current employees of the Township consent to a criminal history record background check to allow the Township access to his or her criminal history record information by fully completing SBI Form 212B in accordance with N.J.A.C. 13:59-1.1 et seq. No prospective employee will be permitted to act as an employee until the results of the background checks have been received and reviewed by the Township Manager.
- B. Any information received by the Township Manager shall be confidential.
- C. The Township of Hardyston shall bear the costs for conducting the criminal history background check.

**§ 3-68. Disqualifying conditions.**

- A. A person may be disqualified from serving as an employee and/or may have his or her employment terminated with the Township of Hardyston if that person’s criminal history record background check reveals a record of conviction of any of the following crimes and offenses:

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- a. In New Jersey, any crime or disorderly persons offense:
    - i. Involving danger to the person, meaning those crimes and disorderly persons offenses as set forth in N.J.S.A. 2C:11-1 et seq., such as criminal homicide; N.J.S.A. 2C:12-1 et seq., such as assault, reckless endangerment, threats, stalking; N.J.S.A. 2C:13-1 et seq., such as kidnapping; N.J.S.A. 2C:14-1 et seq., such as sexual assault; or N.J.S.A. 2C:15-1 et seq., such as robbery.
    - ii. Against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.A. 2C:24-1 et seq., such as endangering the welfare of a child.
    - iii. Involving theft as set forth in Chapter 20 of Title 2C of the New Jersey Statutes.
    - iv. Involving any controlled dangerous substance or controlled substance analog as set forth in Chapter 35 of Title 2C of the New Jersey Statutes, except Paragraph (4) of Subsection (a) of N.J.S.A. 2C:35-10.
  - b. In any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in Subsection A of this section.
- B. In addition, a person shall be disqualified from serving as an employee or shall have his or her employment terminated with the Township of Hardyston if such individual fails to consent to submit to a criminal history record background check pursuant to this Article.

**§ 3-69. Submission requirements; exchange of background check information.**

- A. Prospective and current employees of the Township of Hardyston shall fully complete SBI Form 212B and provide any other necessary information to the Township for the criminal history background check to be performed. The Township shall submit this documentation to SBI for the background check. Thereafter, the Township shall conduct periodic background checks after the date of the initial background check, but not less than every three (3) years.
- B. The Township Manager shall act as a clearinghouse for the collection and dissemination of information obtained as a result of conducting criminal history record background checks pursuant to this section. The Township Manager shall maintain a list of successful background checks.

**§ 3-70. Limitations on access and use of criminal history record information.**

- A. Access to the criminal history record information of all prospective and current employees of the Township of Hardyston for noncriminal justice purposes is restricted to the Township Manager, on a need-to-know basis, as authorized by federal or state statute, rule or regulation, executive order, administrative code, local ordinance or resolution regarding obtaining and dissemination of criminal history record information obtained under this section.

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- B. The Township Manager shall limit his or her use of criminal history record information solely to the authorized purpose for which it was obtained, and criminal history record information furnished shall not be disseminated to persons or organizations not authorized to receive the records for authorized purposes. This record shall be destroyed immediately after it has served its intended and authorized purpose. Any person violating the federal or state regulations governing access to criminal history record information may be subject to criminal and/or civil penalties.

**§ 3-71. Determination by the Township; appeals.**

- A. If a person's criminal history background record check reveals a record of conviction of any of the crimes or offenses set forth in § 3-68, the Township Manager shall notify in writing that person of his or her disqualification from employment with the Township, and such information shall be kept confidential by the Township Manager.
- B. Any person whose criminal history background check disqualifies that person from employment may appeal his or her disqualification within thirty (30) days of receipt of notice of said disqualification with the Township Council. Failure to appeal will result in automatic disqualification from employment with the Township.
- a. A person may challenge the accuracy of the criminal history record.
  - b. A person may claim to be rehabilitated. In determining whether a person has affirmatively demonstrated clear and convincing evidence of rehabilitation, the appeals committee may consider the following factors in conjunction with the provisions of N.J.S.A. 15A:3A-1 et seq.:
    - i. The nature and responsibility of the position which the convicted person would hold or has held, as the case may be;
    - ii. The nature and seriousness of the offense;
    - iii. The circumstance under which the offense occurred;
    - iv. The date of the offense;
    - v. The age of the person when the offense was committed;
    - vi. Whether the offense was an isolated or repeated incident;
    - vii. Any social conditions which may have contributed to the offense; and
    - viii. Any evidence of rehabilitation, including good conduct in prison or the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work release programs or the recommendation of those who have had the person under their supervision.

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- c. No person may appeal a disqualification on the grounds of rehabilitation, if the person has been rejected because that person has been convicted, adjudicated delinquent or acquitted by reason of insanity of aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping pursuant to paragraph (2) of subsection c. of *N.J.S.A. 2C:13-1*; endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of *N.J.S.A. 2C:24-4*; endangering the welfare of a child pursuant to paragraph (4) of subsection b. of *N.J.S.A. 2C:24-4*; luring or enticing pursuant to section 1 of P.L.1993, c.291 (*N.J.S.A. 2C:13-6*); criminal sexual contact pursuant to *N.J.S.A. 2C:14-3b*. if the victim is a minor; kidnapping pursuant to *N.J.S.A. 2C:13-2*, or false imprisonment pursuant to *N.J.S.A. 2C:13-3* if the victim is a minor and the offender is not the parent of the victim; knowingly promoting prostitution of a child pursuant to paragraph (3) or paragraph (4) of subsection b. of *N.J.S.A. 2C:34-1*; or an attempt to commit any of these enumerated offenses.
- C. While the appeal is pending, an existing Township employee may, at the discretion of the Township Manager and based upon the severity of the disqualifying condition, be:
- a. Temporarily suspended with pay;
  - b. Temporarily suspended without pay; or
  - c. Remain employed with the Township with pay.

If an employee is suspended without pay and the Township Council overturns the disqualification, he or she shall be fully reimbursed for all pay lost during the time of suspension. A prospective employee shall not commence employment until a final determination has been made of his or her appeal by the Township Council.

- D. In all instances, the final determination of whether a person will be permitted to serve as an employee will lie in the sole discretion of the majority of the Township Council.
- E. The Township Council shall promptly advise the prospective or current employee whether he or she is qualified.

**§ 3-72. Exemptions.**

The Township shall only permit the following exemptions under this article:

- A. Any person who, by virtue of his/her occupation, is required by statute to undergo a federal and state criminal history record background check similar in nature to the requirements contained herein, and who can provide proof of the results of such background check, is exempt from the requirement hereunder if such check was conducted within the past year. After such demonstration of proof of compliance, such individual shall then be subject to subsequent checks pursuant to § 3-69(A).
- B. Any active employees of local, county and state law enforcement agencies.

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**SECTION 2.** All ordinances of the Township of Hardyston, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

**SECTION 3.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

**SECTION 4.** This Ordinance shall take effect immediately upon final passage, approval, and publication as required by law. All current employees must provide his or her consent to a criminal history record background check within thirty (30) days in accordance with § 3-69.

A motion was made and seconded to open the meeting to the public. All in favor. Motion carried. Hardyston resident, Martin Schweigart, asked if the ordinance also applied to any volunteer of any type that handles children, i.e., sports coaches, etc. Council stated that an ordinance already exists with regard to recreation. 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 2012-09 on second reading, seconded by Kula. All in favor. Motion carried.

**NEW BUSINESS:**

- A. Resolution #55-12 - Resolution authorizing the extension of a shared service agreement with the Sussex County Municipal Utilities Authority for the provision of designated Class A fiber recyclable material handling and marketing with profit sharing

**RESOLUTION #55-12**

**A RESOLUTION OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF HARDYSTON,  
COUNTY OF SUSSEX AND STATE OF NEW JERSEY AUTHORIZING THE EXTENSION OF  
A SHARED SERVICES AGREEMENT WITH THE SUSSEX COUNTY MUNICIPAL UTILITIES  
AUTHORITY FOR THE PROVISION OF DESIGNATED CLASS A FIBER RECYCLABLE  
MATERIAL HANDLING AND MARKETING WITH PROFIT SHARING**

**WHEREAS**, the Sussex County Municipal Utilities Authority (hereinafter "SCMUA"), among other things, operates a recycling program within Sussex County as provided in the Sussex County District Solid Waste Management Plan; and

**WHEREAS**, the Uniform Shared Services and Consolidation Act, (N.J.S.A. 40A:65-1, et. seq.) (hereinafter, "the Act") provides that local units of government may enter into a contract to provide or receive any service that either local unit participating in the Agreement is empowered to provide or receive within its own jurisdiction, including services incidental to the primary purposes of any of the participating units. (N.J.S.A. 40A:65-4.); and

**WHEREAS**, the Township of Hardyston has entered into a contract for services of the SCMUA in the form of performing designated Class A Fiber recyclable material handling and marketing with profit sharing; and

**WHEREAS**, the Township of Hardyston seeks to extend such terms of said contract for a term expiring August 31, 2013; and

**WHEREAS**, SCMUA has the ability and is desirous of making its Recycling Facility and recycling marketing capabilities available to Hardyston Township under the terms and conditions set forth in the Shared Services Agreement.

**NOW, THEREFORE, BE IT RESOLVED**, by the Township Council of the Township of Hardyston, in the County of Sussex, and State of New Jersey as follows:

1. The Mayor and Township Clerk are hereby authorized and directed to extend the Shared Services Agreement, a copy of which is attached hereto, with the SCMUA for the provision of designated Class A Fiber recyclable material handling and marketing with profit sharing whereby the term of said agreement shall expire on August 31, 2013.

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2. The Mayor and Clerk are hereby authorized to execute any additional non-substantial amendments and/or modifications to the Agreement without the consent of the Township Council.
3. This Resolution shall take effect immediately.

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

- B. Resolution #56-12 – Approval to submit a grant application and execute a grant contract with the New Jersey Department of Transportation for the Holland Mountain Road Improvement project

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

- C. Tax Collector Resolutions

1. Resolution #57-12 – Cancel remaining taxes for tax year 2012 for parcels purchased by the Township of Hardyston with Affordable Housing Trust Fund Money

**RESOLUTION # 57-12**

WHEREAS, the following parcels were purchased by the Township of Hardyston between June 16, 2012 and July 9, 2012 with Affordable housing Trust Fund money, and

WHEREAS, property taxes were paid for the first 6 months of 2012, now the municipal portions for 6 months need to be cancelled from record.

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the Township of Hardyston that the Tax Collector be authorized to cancel the municipal portion of taxes for the remainder of 2012 in the amounts of \$ 2,853.00.

BLOCK	LOT	QUAL	ADDRESS	AMOUNT
16.15	1	C0502	26 Clubhouse Road	\$ 600.60
67	51.12		3 Meadow Lane	\$ 505.98
67.11	11		1 Spruce Run	\$ 576.30
67.07	1.30		5 Pale Star Court	\$ 593.28
67.07	1.11		22 Sundance Terrace	\$ 576.84

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

- D. Resolution #58-12 – Resolution authorizing the execution of a second amendment to the Affordable Housing Developer’s Agreement with Crystal Springs Builders, LLC

**RESOLUTION #58-12**

**RESOLUTION OF THE HARDYSTON TOWNSHIP COUNCIL, APPROVING AND AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT TO THE AFFORDABLE HOUSING DEVELOPER’S AGREEMENT WITH CRYSTAL SPRINGS BUILDERS, LLC**

WHEREAS, by Resolution dated July 2, 2007 the Township Council approved and authorized the execution of an Affordable Housing Developer’s Agreement (the “Agreement”) with Crystal Springs Builders, LLC (the “Developer”) in order to achieve compliance with the requirements of the regulations of the New Jersey Council on Affordable Housing (COAH); and

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WHEREAS, the Agreement provides that the Developer's affordable housing obligation under the Grand Cascades Developer's Agreement, and any increased obligation arising out of the development of Grand Cascades Lodge, would be satisfied by the posting of a letter of credit in accordance with the provisions of the Grand Cascades Developer's Agreement; and

WHEREAS, by Resolution dated May 6, 2008 the Township Council authorized the execution of the First Amendment to the Agreement (the "First Amendment"); and

WHEREAS, the First Amendment increased the Developer's Grand Cascades Lodge affordable housing obligation and required the Developer to increase its letter of credit from \$1,200,000 to \$1,380,000 due to the approved addition of a pool conservatory area to the Grand Cascades Lodge; and

WHEREAS, the Developer now seeks to satisfy its Grand Cascades Lodge affordable housing obligation by transferring that obligation to the Village Center South Planned Unit Development; and

WHEREAS, the Township desires to approve this method for the Developer to satisfy its Grand Cascades Lodge affordable housing obligation and to authorize the Township Manger to execute a Second Amendment to the Agreement for this purpose.

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Hardyston, in the County of Sussex and State of New Jersey, that the Second Amendment to the Affordable Housing Developer's Agreement with Crystal Springs Builders, LLC (a copy of which is on file in the office of the Township Clerk) is hereby approved and the Township Manager is hereby authorized to execute same.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

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

E. Proposals to Complete Landfill Gas Monitoring Relative to Closure Plan Analysis

A motion was made by Ross to accept the proposal from Cerenzio and Panaro (CP Engineers, LLC), seconded by Hamilton. All in favor. Motion carried.

Township Manager stated that a request was received from Project Self-Sufficiency for the Township to participate as an official partner in the "Enough Abuse Campaign", a Sussex and northern Warren County community-based, Project Self-Sufficiency public awareness campaign to prevent child sexual abuse. She stated that by joining, the Township agrees to help promote the "Enough Abuse Campaign" in our community and for our information to be displayed in the media campaign. A motion was made by Hamilton to participate, seconded by Ross. All in favor. Motion carried.

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

**PUBLIC PORTION:** A motion was made and seconded to open the meeting to the public. All in favor. Motion carried. Residents Brian and Lee Gordon of Deerfield Drive and Robert and Viola Holt of Deerfield Drive presented the Council with documents relating to drainage issues on their property for their review. Resident Marty Schweigart inquired about solar panels and restriping of a road leading into Crystal Springs. A motion was made and seconded to close the meeting to the public. All in favor. Motion carried.

**EXECUTIVE SESSION:**

**BE IT RESOLVED** by the Township Council of the Township of Hardyston on the 2nd day of October, 2012, that:

1. Prior to the conclusion of this **Regular Meeting**, the Township Council shall meet in Executive Session, from which the public shall be excluded, to discuss matters as permitted pursuant to N.J.S.A. 10:4-12, sub-section (s):

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- 2.
- ( ) b. (1) Confidential or excluded matters, by express provision of Federal law or State statute or rule of court.
  - ( ) b. (2) A matter in which the release of information would impair a right to receive funds from the Government of the United States.
  - ( ) b. (3) Material the disclosure of which constitutes an unwarranted invasion of individual privacy.
  - ( ) b. (4) A collective bargaining agreement including negotiations.
  - ( ) b. (5) Purchase, lease or acquisition of real property, setting of banking rates or investment of public funds, where it could adversely affect the public interest if disclosed.
  - ( ) b. (6) Tactics and techniques utilized in protecting the safety and property of the public, if disclosure could impair such protection. Investigation of violations of the law.
  - ( X ) b. (7) Pending or anticipated litigation or contract negotiations other than in subsection b. (4) herein or matters falling within the attorney-client privilege.
  - ( ) b. (8) Personnel matters.
  - ( ) b. (9) Deliberations after a public hearing that may result in penalties.
3. The time when the matter(s) discussed pursuant to Paragraph 1 hereof can be disclosed to the public is as soon as practicable after final resolution of the aforesaid matter(s).

Motion to adopt: Ross  
Seconded by: Cicerale

<u>MOTION</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Ross	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Kula	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Hamilton	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Miller	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Cicerale	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>

Motion carried.

A motion was made by Kula to come out of Executive Session, seconded by Hamilton. All in favor. Motion carried.

**ADJOURNMENT:** A motion was made by Ross to adjourn at approximately 8:10 p.m., seconded by Hamilton. All in favor. Motion carried.

Jane Bakalarczyk, RMC/CMC  
Municipal Clerk