

### **CALL TO ORDER**

Mayor Warren Cooper called the meeting to order at 7:30 p.m. and stated that in compliance with the "Open Public Meetings Act" this Meeting was duly advertised and published in the Hunterdon County Democrat on January 12, 2012 and the Express Times on January 12, 2012; the Agenda has been posted at Borough Hall and distributed to the Courier News, the Express Times, the Hunterdon County Democrat, and the Star Ledger on October 3, 2012.

### **FLAG SALUTE**

Mayor Cooper asked everyone to stand for the flag salute.

### **ROLL CALL**

Present for the Meeting:

Seth A. Grossman  
Cathy Leach  
Michele Liebttag  
Brad Myhre  
William Sullivan

Absent from Meeting:

Robb Arent

Attorney Albert Cruz, and Borough Clerk, Brenda S. Shepherd, were present for the meeting. 5 members of the public were also present.

### **PUBLIC HEARING**

#### **Ordinance #718– Steep Slope Ordinance**

On motion by Cathy Leach, seconded by Michele Liebttag and carried by unanimous favorable voice vote, the Mayor and Common Council approved to open the public hearing on Ordinance #718. There were no public comments on the ordinance. On motion by Brad Myhre, seconded by Michele Liebttag, and carried by unanimous favorable voice vote, the Mayor and Common Council approved to closed the public hearing on Ordinance #718.

#### **Ordinance #719 – Minimum Acceptable Riparian Zone Ordinance**

On motion by Michele Liebttag, seconded by Cathy Leach and carried by unanimous favorable voice vote, the Mayor and Common Council approved to open the public hearing on Ordinance #719. There were no public comments on the ordinance. On motion by Seth A. Grossman, seconded by Brad Myhre, and carried by unanimous favorable voice vote, the Mayor and Common Council approved to closed the public hearing on Ordinance #719.

### **PUBLIC COMMENTS**

The Mayor and Common Council approved to open the public comment session by favorable voice vote.

Steve Jelley of 11 Fifth Street noted that he sent in a letter a week ago. He added that his furnace died in August. It is a boiler for hot water and heat. We began to research options and the most efficient is to connect to the gas line. They have contracted with Elizabethtown Gas. Elizabethtown Gas did not contact the Borough until after the September 5<sup>th</sup> meeting. Mr. Jelly stated that he heard back for Elizabethtown gas that the Borough denied the permit unless we pay \$5,000.00. There is an ordinance that bars work on the road that had recently been redone. Mayor Cooper stated that the ordinance was in existence and the Borough just added several roadways to that ordinance on September 5<sup>th</sup>. Mr. Jelley stated that they need heat and asked if the ordinance provides for an emergency access? He added that they started the process in August and asked if there is an

exception for pre-existing work that had been started? He noted that the whole process will put them into November. Mayor Cooper stated that the Council will discuss this tonight.

Dale Ewald, Borough resident, stated that he has an insurance claim for the Borough for electric service damage to 1002 Harrison Street. On the 10<sup>th</sup> of September, there was a tree limb that came down on the house. The power mask was bent four inches out of center. He was required to replace the mask and the attachments to it. The bill was \$340.65. Mayor Cooper recommended that he share what he has with the Clerk. It would be inappropriate for us to respond until we look into the matter. Mr. Ewald added that since this occurred, another limb has come out of the tree. JCP&L was called in on September 5<sup>th</sup>. He added that their tree crew said another limb needs to be taken down. He understands that the shade tree has inspected the tree. JCP&L's tree crew recommended that the town employ someone to climb into the tree and inspect it. Council should consider that. Dale Ewald added that Mr. Haver was advised. They will need more than \$1,000.00 to get this done.

Attorney Cruz stated that if you have an insurance claim, you must file a notice of tort claim within 90 days of the date of the accident, injury and damage occurred. The Clerk can give you a notice of tort claim form. The notice of tort claim is sent to the insurance company.

Dale Ewald also noted that he went to the Borough years ago in reference to the north side of upper Fifth Street. When the road was redone, they left the last 8 inches to the curb unpaved. He got the town to put in cold patch back then. The cold old patch is gone and erosion is happening on the bank. He was told by public works that there is no money. There is an 8 inch pitch in a 10 to 12 foot span. The town took ditches out and put in storm drains years ago and the erosion continues. The town needs to get street people up there to do something so that the erosion does not continue. He asked if the town could give him an idea of when and what will be done. Mayor Cooper commented that Engineer Burr and him will try to do a tour of the roads in town and put together a inventory of what needs to be done and when. You will be informed when we come through the town.

Robert Haver noted in reference to Dale Ewald, that the Shade Tree Commission has approved status and is in compliance with state requirements.

Bill Tinsman from the American Legion noted that they have submitted a voucher for this year's Halloween parade. The parade will be October 27<sup>th</sup> at 7:00 pm. There is interest in changing the route of the parade. They are having a committee meeting Friday night at 7:00 at the Legion. Brad Myhre added that Michele Liebttag, the Mayor, Chief of Police and a representative from the fire company will attend. He thanked Bill Tinsman for rerouting the parade downtown. Mayor Cooper stated that for the last several years, instead of the parade coming downtown, the viewing stand has been at the Legion. A number of us thought it should come downtown. We are working will Bill Tinsman to do this.

Dominikija Prostack, the Green Team leader, stated that the green fair was a success. They received a good response from exhibitors and the public. Everyone had a nice time and the weather held up for us. It looks like the Green Fair committee would like to continue this on an annual basis.

Dominikija Prostack noted that the Yard Sale is this weekend Friday, Saturday and Sunday. She added that they had 48 to 50 locations last year and only have about 20 this year. There is a \$8.00 fee to pay for advertising and the rest goes to the First Presbyterian Church for the food pantry.

Dominikija Prostack also noted that the Green Team received a \$2,000.00 grant from Sustainable NJ to use toward promoting actions through Sustainable NJ to get Frenchtown to the Bronze level accreditation. That will get us to a point where we can apply for grants. William Sullivan

commented that the Green Fair was well attended. He received comments that the Green Fair was like a community day. The town could change Community day to Green day. Everyone did a good job. Mayor Cooper stated that the Green Fair was a great success and a lot of hard work went into it for a long time. The following people were part of the committee: Cathy Leach, Adrienne Crombie, Bonnie Pariser, Michele Liebttag, Gerry St. Onge and Mary Battimelli, Don Dalen, Richard Reilly and Jenny Issac. Cathy Leach added that she heard people say they look forward to it next year. Dominikija Prostack noted that one of the vendors will consider being a sponsor next year.

Having no other public comments, the Mayor and Common Council approved to close the public comment session by favorable voice vote.

**CONSENT AGENDA** – All matters listed on the Consent Agenda are considered to be routine by the Governing Body and will be enacted by one motion in the form listed below. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

Cathy Leach requested that the minutes of the September 5, 2012 regular meeting and September 14, 2012 special meeting be removed from the consent agenda.

On motion by Seth A. Grossman seconded by Brad Myhre and carried by favorable voice vote, the Mayor and Common Council approved Resolutions #2012-104, Resolution #2012-105 and #2012-106 as follows and the bills list dated 10/3/12:

**Resolution no. 2012 - 104**

**Tax sale redemption**

**Whereas**, the Tax Collector has been paid by Wells Fargo to redeem Tax Sale Certificate No. 10-004 the amount of \$1,238.28 on Block 32, Lot 2.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Common Council of the borough of Frenchtown, County of Hunterdon and State of New Jersey, that the Chief Financial Officer be authorized to issue a check payable to Josef Hoffmann, 326 Shady Lane, Trenton, New Jersey, 08619, in the amount of \$1,238.28.

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Warren E. Cooper, Mayor

Attest

October 3, 2012

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Brenda S. Shepherd, RMC  
Borough Clerk

**Resolution no. 2012 - 105**  
**Tax sale redemption**

Whereas, the Tax Collector has been paid by Ocwen Loan Servicing LLC to redeem Tax Sale Certificate No. 11-004 the amount of \$1,436.36 on Block 33, Lot 9, and

WHEREAS, there was paid a premium at the time of sale in the amount of \$700.00.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Common Council of the borough of Frenchtown, County of Hunterdon and State of New Jersey, that the Chief Financial Officer be authorized to issue a check payable to US Bank Cust-Sass Muni Vi dtr, 2 Liberty Place, 50 S. 16<sup>th</sup> St., Philadelphia, PA, 19102, in the amount of \$2136.36.

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Warren E. Cooper, Mayor

Attest

October 3, 2012

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Brenda S. Shepherd, RMC  
Borough Clerk

**RESOLUTION NO. 2012 - 106**

**APPROVAL OF ITEMS OF REVENUE AND APPROPRIATION  
(N.J.S.A. 40A:4-87)**

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

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

NOW, THEREFORE, BE IT RESOLVED that the Borough of Frenchtown, in the county of Hunterdon, State of New Jersey, hereby requests the Director of Division of Local Government Services to approve the insertion of an item of revenue, NEW JERSEY CLEAN ENERGY AUDIT, in the budget of the year 2012 in the sum of \$20,000.00 which item is now available as revenue from the New Jersey Clean Energy Program.

BE IT FURTHER RESOLVED that the like sum of \$20,000.00 is hereby appropriated under the caption "New Jersey Clean Energy Audit"; and

BE IT FURTHER RESOLVED that the above is a result of a revenue from the New Jersey's Clean Energy Program in the amount of \$20,000.00.

Attest:

October 3, 2012

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Brenda S. Shepherd, RMC  
Borough Clerk

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Mayor Warren E. Cooper

**PRESENTATION OF VOUCHERS - dated 10-03-12**

The bills list dated 10/03/12 was approved as part of the consent agenda as attached to the original set of minutes which includes the Current Fund account in the amount of \$85,027.09, the Planning Trust Account in the amount of \$375.00, the Capital Improvement Fund in the amount of \$2,146.65, the Animal Control Trust Fund in the amount of \$306.44, Sewer Utility account in the amount of \$35,071.35, the Sewer Capital Improvement account in the amount of \$77,071.38, the General Trust Fund account in the amount of \$700.00, and the Off Duty Police Officer's Trust in the amount of \$1,490.80.

**PRESENTATION OF MINUTES**

On motion by Seth A. Grossman, seconded by Michele Liebttag and carried by favorable roll call vote, the Mayor and Common Council approved the minutes of the Regular Meeting of September 5, 2012 with Brad Myhre abstaining.

On motion by Michele Liebttag, seconded by Brad Myhre and carried by favorable roll call vote, the Mayor and Common Council approved the minutes of the Special Meeting of September 14, 2012 with Cathy Leach abstaining.

**RESOLUTIONS**

**Resolution #2012-107 Resolution awarding a contract to Kalogridis Contracting, LLC for the Nishisakawick Creek – Stream Bank Restoration Project**

Mayor Cooper noted that the Borough received 8 bids. The low bid was \$262,000.00, way under our expectations. The Engineer opened the bids. Discussion ensued as to the qualification of the contractors. Attorney Cruz noted that every bid has a questionnaire with references. Engineer Burr checked those reference and he believes he saw an email that it has been done. There was a section in there that Engineer Burr signed off. Seth A. Grossman requested that it be attached to the resolution. Attorney Cruz stated that he saw the letter and saw the bids. The bid meets the requirements of specifications. It was made very clear that if the December 21<sup>st</sup> date was not met, the contractor would be liable for the loss of funding. It was not per day. It is what the borough would be responsible for paying. On motion by William A. Sullivan, seconded by Cathy Leach and carried by favorable voice vote, the Mayor and Common Council approved Resolution #2012-107 as follows:

**RESOLUTION No. 2012-107**

**WHEREAS**, the Mayor and Council of Frenchtown Borough, Hunterdon County, received and opened bids on Friday, September 21, 2012 at 11 am for the Nishisakawick Creek – Stream Bank Restoration Project; and

**WHEREAS**, bids were received from a total of eight (8) contractors; and

**WHEREAS**, the following is a summary of the bids:

Contractor	Base Bid	Alt. Bid A	Alt. Bid B	Total
Kalogridis Contracting, LLC North Brunswick, NJ	\$262,000.00	\$7,080.00	\$17,775.00	\$286,855.00
Adamsville Maintenance, Inc. Bound Brook, NJ	\$349,912.00	\$7,900.00	\$17,375.00	\$375,187.00
The Dawson Corp. Clarksburg, NJ	\$382,371.50	\$8,458.80	\$9,125.00	\$399,955.30
Land-Tech Enterprises, Inc. Warrington, Pa.	\$398,987.00	\$14,460.00	\$10,600.00	\$424,047.00
KDP Developer's Inc. Stewartsville, NJ	\$490,300.00	\$14,308.00	\$7,525.00	\$512,133.00
Earthworks, Inc. Farmingdale, NJ	\$493,270.00	\$27,600.00	\$17,500.00	\$538,370.00
GMP Contracting, LLC South Plainfield, NJ	\$594,135.86	\$14,184.60	\$28,140.00	\$636,460.46
Barbella Const. Services, LLC Somerville, NJ	\$796,050.00	\$16,240.00	\$16,250.00	\$828,540.00

**WHEREAS**, the Borough Engineer has reviewed the bids and recommended award of the low bid from Kalogridis Contracting, LLC of North Brunswick, NJ; and

**WHEREAS**, the Borough Attorney has also reviewed the bids; and

**NOW THEREFORE, BE IT RESOLVED**, by the Mayor and Council of Frenchtown Borough, at its meeting of October 3, 2012, that a contract be awarded to Kalogridis Contracting, LLC for the Nishisakawick Creek – Stream Bank Restoration Project in the amount of \$286,855.00; and

**BE IT ALSO RESOLVED**, that the award is contingent upon and does not become effective until the twenty (20) day estoppel period has expired without a challenge (within that 20 day period) to the Bond Ordinance which is scheduled to be adopted on September 27, 2012.

**ADOPTED: October 3, 2012**

I, Brenda S. Shepherd, Municipal Clerk of Frenchtown Borough, do hereby certify this to be a true copy of a resolution adopted by the Borough Mayor and Council at a meeting held on October 3, 2012.

SEAL

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Brenda S Shepherd, Borough Clerk  
Frenchtown Borough

**Resolution #2012-108 – Approval to submit a grant application and execute a grant agreement with the NJDOT for the Horseshoe Bend Road Improvement Project**

Attorney Cruz noted that the resolution is a standard NJDOT resolution. Brad Myhre noted that Engineer Clerico in conjunction with Kingwood Township estimated the project at \$180,000.00 plus \$15,000.00 for engineering costs. On motion by Brad Myhre, seconded by Michele Liebttag and carried by unanimous favorable roll call vote, the Mayor and Common Council approved Resolution

**BOROUGH OF FRENCHTOWN  
RESOLUTION #2012-108  
APPROVAL TO SUBMIT A GRANT APPLICATION AND EXECUTE A GRANT  
AGREEMENT WITH THE NEW JERSEY DEPARTMENT OF  
TRANSPORTATION FOR THE HORSESHOE BEND ROAD IMPROVEMENT  
PROJECT**

WHEREAS, Robert J. Clerico, P.E., Borough Special Projects Engineer, has prepared an application to the New Jersey Department of Transportation Local Aid Bureau for funding the Horseshoe Bend Road Improvement Project; and

WHEREAS, the Mayor and Common Council of the Borough of Frenchtown has reviewed said application and approves the grant application for the above stated project;

THEREFORE BE IT RESOVED that the Mayor and Common Council of the Borough of Frenchtown authorized Mayor Warren E. Cooper to submit an electronic application identified as ID# MA-2013-Frenchtown Borough-00398 to the New Jersey Department of Transportation on behalf of the Borough of Frenchtown for the Horseshoe Bend Road Improvement Project.

BE IT FURTHER RESOVED that Mayor Cooper is hereby authorized to execute the grant agreement on behalf of the Borough of Frenchtown and that his signature constitutes acceptance of the terms and conditions of the grant agreement and approves the execution of the grant agreement.

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Warren E. Cooper, Mayor

Dated: October 3, 2012

ATTEST:

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Brenda S. Shepherd, RMC  
Borough Clerk

Mayor Cooper stated that he would like approval from Council to submit additional grant applications to the NJDOT. They have to be submitted by October 16<sup>th</sup>. They would be prepared by Engineer William Burr. Brad Myhre noted that the Borough has to rank the projects to the state. Horseshoe Bend Road would be the number one. Kingwood Township tomorrow night is introducing a similar resolution with regard to their portion of their project on Horseshoe Bend Road. The Borough owns part of the roadway up to a point and a little further on the north side of the road and Kingwood Township owns a portion and a portion that extends a little further on the

south side. It makes sense to do it all together. Mayor Cooper stated that he would like the Borough to prepare and submit other grant applications. Seth A. Grossman asked what those fees would be? He noted that Engineer Clerico does not charge us if we do not get the grant. William Sullivan asked if Engineer Burr will charge the Borough for his time. Brad Myhre stated that he is fine with other applications if Maser Consulting is doing it at no cost if the Borough does not get the grant. Mayor Cooper stated that within a week or ten days, he will ask Engineer Burr to submit identification of projects we may undertake and how much he will charge us to prepare applications. Attorney Cruz stated that you will need a written resolution on the 17<sup>th</sup> of October to ratify an application that would be submitted to the NJDOT.

## **ORDINANCES**

### **Ordinance #718- Steep Slope Ordinance (adoption)**

Mayor Cooper noted that the Planning Board has reviewed ordinances #718 and #719 at its meeting on September 26, 2012 and determined that the ordinances are consistent with the master plan. On motion by William Sullivan, seconded by Seth A. Grossman and carried by unanimous favorable roll call vote, the Mayor and Common Council approved the adoption of Ordinance #718 as follows:

### **ORDINANCE NO. 718**

**AN ORDINANCE AMENDING THE STEEP SLOPE  
REGULATIONS IN THE LAND USE ORDINANCE OF THE  
BOROUGH OF FRENCHTOWN IN THE COUNTY OF  
HUNTERDON AND STATE OF NEW JERSEY TO  
CHANGE THE EXISTING REQUIREMENTS  
APPLICABLE TO SLOPES OVER FIFTEEN PERCENT  
(15%)PER N.J.D.E.P. REQUIREMENTS FOR APPROVAL  
OF THE WASTEWATER MANAGEMENT PLAN**

It is hereby ordained by the Borough Council of the Borough of Frenchtown, County of Hunterdon, State of New Jersey, as follows:

**Section 1.** Section 310 of the Land use Ordinance, entitled Steep Slope Development Requirements, is hereby deleted in its entirety and substituted with the following:

Section 310. Steep Slope Development Requirements.

- A. The following requirements shall apply to the subdivision or development of any lot or tract in the R-1 and R-6 zone districts:
  - 1. The applicable provision of Sections 401, 408 and 203 of this Ordinance relating to minimum lot sizes, dwelling unit densities and impervious surface coverage for permitted nonresidential uses shall be modified as follows:

- a. The boundaries of the tract that is proposed to be subdivided or developed shall be superimposed over a topographic map of the area (at two foot contour intervals) prepared and certified by a licensed land surveyor from an actual field survey. A steep slope analysis showing each of the slope classes listed below shall be delineated on the subdivision plat or site plan. The percent of the area within each slope range indicated below shall be multiplied by the corresponding development factor:

<u>Percent of Tract Area</u>	<u>Slope Range</u>	<u>Development Factor</u>	<u>Product</u>
	(0% - 10%)	x 1.00	=
	(+10% - 15%)	x .70	=
	(+15% - 20%)	x .20	=
	(+20%)	x 0.0	=

- b. The sum of the products resulting from the multiplication of the percent of the total tract area within each slope range by the corresponding development factor shall be the developable tract area.
  - c. The developable tract area shall be divided by the required minimum lot size for the district, in the case of a subdivision, to determine the permitted number of lots in the subdivision.
  - d. The developable tract area shall be multiplied by the maximum permitted density of residential development or, in the case of a nonresidential development, by the maximum permitted impervious surface coverage to determine the number of dwelling units or square footage of impervious surface coverage (for a nonresidential development) permitted to be developed.
2. In areas with slopes of fifteen (15) percent to twenty (20) percent, no more than fifteen (15) percent of such areas shall be developed and/or regraded or stripped of vegetation, and a drainage plan shall be submitted indicating that the development, regrading or stripping of vegetation in such areas will not increase runoff from the site over predevelopment conditions.
  3. In areas with slopes of twenty (20) percent or more, no development, regrading or stripping of vegetation shall be permitted.
- B. Notwithstanding the above, an existing lot of record at the time of the passage of this Ordinance may be developed with any use permitted as of right in the R-1 district and shall be exempt from the above provisions unless and until an application is made for a subdivision of that lot or for its development with any use other than those listed in Section 401.B. The following requirements shall nevertheless apply to existing lots of record for which construction of any improvement is proposed on a slope of 15 percent or more regardless of the nature of the improvement:

1. A lot grading plan which indicates the proposed driveway plan and profile and other site grading information relating to the proposed improvement(s) shall be submitted for review and approval by the Borough Engineer. Such plan shall also provide for the proper protection and stabilization of all disturbed areas consistent with the design techniques established by the Soil Erosion and Sediment Control Standards adopted and amended by the New Jersey State Soil Conservation Committee.
2. The Borough Engineer shall verify that the proposed driveway design is capable of providing access for emergency vehicles and equipment under all weather conditions

**SECTION 2.** Section 408.C.4. of the Land Use Ordinance is hereby deleted and substituted with the following:

4. Development shall be prohibited in floodplains and in minimum riparian corridors and on wetlands and wetlands transition areas, except as may be permitted by NJDEP, and on slopes over 20 percent. Development on steep slopes shall be subject to the regulations of Section 310. To the extent possible, areas of unique and mature vegetation shall be preserved from development. The foregoing critical areas and natural features shall be included in the required open space except as may be necessary to gain access to the development area of the site.

**Section 3.**

This Ordinance shall take effect immediately upon final passage and publication according to law.

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Warren Cooper, Mayor

ATTEST:

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Brenda Shepherd, RMC  
Borough Clerk

**Ordinance #719 – Minimum Acceptable Riparian Zone Ordinance (adoption)**

On motion by William Sullivan, seconded by Cathy Leach and carried by unanimous favorable roll call vote, the Mayor and Common Council approved the adoption of Ordinance #719 as follows:

**ORDINANCE #719  
MINIMUM RIPARIAN ZONE ORDINANCE**

- I. Purpose and Authority**
- II. Definitions**
- III. Establishment and Protection of Riparian Zones**
- IV. Variances**
- V. Exceptions**
- VI. Appeals, Conflicts, and Severability**
- VII. Enforcement**
- VIII. Effective Date**

**I. PURPOSE AND AUTHORITY**

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 Frenchtown and to comply with N.J.A.C. 7:15-5.25(g)3, which requires municipalities to adopt an ordinance that prevents new disturbance for projects or activities in riparian zones as described herein. Compliance with the riparian zone requirements of this Ordinance does not constitute compliance with the riparian zone or buffer requirements imposed under any other Federal, State or local statute, regulation or ordinance.

**II. DEFINITIONS**

The following definitions shall be used in interpreting and applying the provisions of this Ordinance:

**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.

**Applicant** means a person, corporation, government body or other legal entity applying to the Borough Planning Board/Board of Adjustment or applying for a Zoning Permit or for a Construction Permit who is proposing to engage in any 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.

**Disturbance** means the placement of impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting, or removing of vegetation.

**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. There is no riparian zone along the Atlantic Ocean nor along any manmade lagoon or oceanfront barrier island, spit or peninsula.

**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 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.

### III. ESTABLISHMENT AND PROTECTION OF RIPARIAN ZONES

- A. Except as provided in Sections IV. and V. below, 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.
  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 regulated water;
    - 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 regulated water; and
    - d. Any segment of a water 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. 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, 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 discernible channel, the riparian zone is measured landward of the feature's centerline.

- C. 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 of the riparian zone on any plan submitted to the Borough of Frenchtown 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 State regulation, the New Jersey Department of Environmental Protection.

#### **IV. VARIANCES**

To the extent allowed by the Stormwater Management Rules (N.J.A.C. 7:8), the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13), and the Highlands Water Protection and Planning Act Rules (N.J.A.C. 7:38), new disturbances for projects or activities in the riparian zone established by this Ordinance may be allowed through the Zoning Board of Adjustment review and approval of a variance, provided the disturbance is proposed to be located on a pre-existing lot (existing as of the effective date of this ordinance) when there is insufficient room outside the riparian zone for the proposed use otherwise permitted by the underlying zoning; 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 upon proof by virtue of submission of appropriate maps, drawings, reports and testimony, that the disturbance is:

- A. Necessary to protect public health, safety or welfare;
- B. To provide an environmental benefit;
- C. To prevent extraordinary hardship on the property owner peculiar to the property; or
- D. To prevent extraordinary hardship, provided the hardship was not created by the property owner, by not allowing a minimum economically viable use of the property based upon reasonable investment.

#### **V. EXCEPTIONS**

To the extent allowed under the Stormwater Management Rules (N.J.A.C. 7:8), the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13), and the Highlands Water Protection and Planning Act Rules (N.J.A.C. 7:38) and subject to review and approval by the New Jersey Department of Environmental Protection to the extent required by those rules, the following disturbances for projects or activities in the riparian zone established by this Ordinance are allowed:

- A. Redevelopment within the limits of existing impervious surfaces;
- B. Linear development with no feasible alternative route;
- C. Disturbance that is in accordance with a stream corridor restoration or stream bank stabilization plan or project approved by the New Jersey Department of Environmental Protection;
- D. Disturbance 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; or
- E. Disturbance with no feasible alternative 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.

## **VI. APPEALS, CONFLICTS, AND SEVERABILITY**

- A. Any party aggrieved by the location of the riparian zone boundary determination under this Ordinance 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.
- B. Any party aggrieved by any determination or decision of the Zoning Officer under this Ordinance may appeal to the Mayor and Common Council of the Borough of Frenchtown. The party contesting the determination or decision shall have the burden of proof in case of any such appeal.
- C. 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 shall apply.
- D. 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.

## **VII. ENFORCEMENT**

A prompt investigation shall be made by the Code Enforcement Office/Zoning Officer of the Borough of Frenchtown, 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 Borough of Frenchtown, 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.

## **VIII. CODIFICATION**

The enumeration of the separate provisions of this Ordinance may be changed to accommodate codification of the provisions of this adopted Ordinance into the Borough's Land Use Ordinance.

## **IX EFFECTIVE DATE**

This Ordinance shall take effect upon final adoption and publication in accordance with the law on the date it is filed with the County Planning Board after adoption.

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Warren E. Cooper, Mayor

ATTEST:

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Brenda Shepherd, RMC, Borough Clerk

## **NEW BUSINESS**

### **Trick or Treat – October 31<sup>st</sup>, 6-8 pm**

Mayor Cooper noted that he would like consent from the Council to hold Trick or Treat on October 31<sup>st</sup> from 6-8 pm. The Council consented. Attorney Cruz noted that there was a curfew imposed last year. Mayor Cooper responded that there was no request for curfew this year.

## **BOROUGH BANs**

Mayor Cooper noted that at the next meeting we will have to consider how to deal with a BAN that will be coming due at the end of November. We need to put that financing plan in place. The Borough has close to \$1,000,000.00 in BANs and part of is from the Railroad Avenue project. We have not received money from the state yet for that grant. The BANs are temporary funding for

capital improvement projects. When we know we have grant money coming in, we will put a BAN in place rather than long term bonds. Seth A. Grossman added that the state reimburses the municipality but we borrow money to make sure the project happens. We have to meet requirements for the reimbursement.

## **OLD BUSINESS**

### **Nishissackwick stream restoration**

Mayor Cooper noted that the Nishissackwick stream restoration project is going forward. We have easements signed by four of the property owners effected. He is meeting with the fifth property owner this week. He added that the contract was awarded for an amount under what we expected to pay.

### **Wastewater Treatment Plant Project**

Mayor Cooper noted that Robb Arent was at the monthly meeting but Mayor Cooper does not have report.

### **River Mills**

Mayor Cooper reported that River Mills has completed the work it had to complete. We are waiting to hear when they intend to start building. Someone spoke to one of the members of George Michael's crew and they said they would see us in five years. They are not coming back. Mayor Cooper then asked Mr. Michael about that and Mr. Michael stated that whoever spoke did not do it with authority and that is not what we have planned. Responding to Seth A. Grossman, Attorney Cruz noted that he spoke to the developer's attorney and they hope to have the transfer of the property resolved by the next meeting. The title for this was obtained in 2005 and they are doing a rundown search to present and Attorney Cruz stated that he does not anticipate that it will be a problem. There is a mortgage on that property. The mortgage has to be partially released from that property. He spoke to Mr. Michael's attorney and they are getting that partial release.

### **Kingwood Avenue sewer pipe project**

Brad Myhre reported that the Borough got money from FEMA for it. He did not get an answer back from FEMA about using in kind labor.

## **COUNCIL COMMENTS/COMMITTEE REPORTS**

Michele Liebttag reported that the Green Fair was an awesome event. She was happy to be involved. She added that she set up a table to talk about the Borough and County recycling programs. Everyone was responsive and taking materials and learning about growing the program in the Borough.

Michele Liebttag also reported that Clean Up Day is scheduled for Saturday, October 13<sup>th</sup>, the Saturday after the yard sale days. The County is having an Electronic Clean Up Day October 13<sup>th</sup> and a Hazardous Waste Day Clean Up November 20<sup>th</sup>. It is included in the two page mailer due to come out within a week or so. She handed out copies of the mailer at the Green Fair.

Michele Liebttag noted that Jerry Hoffman and Mike Atheras were pleased with the out come of the pie contest. Cathy Leach stated that they raised around \$450.00 from the contest. Mayor Cooper commented that there were 18 or 19 people who submitted pies for the pie baking contest and we had local pastry chefs serve as judges. They named several runner ups and a sweet pie winner, a savory pie winner and a grand prize winner. Slices of those pies were sold for \$3.00 per slice for a donation to the Fire Company. He talked people into paying \$10.00 per slice of the grand prize winner's pie. We did well for the fire company.

William Sullivan reported that Public Works did routine maintenance. Public works did acquire almost all the parts for the leaf vac from a municipality's retired machine. It is up and running and we will be on track for pick up. Pick up will start at the beginning of November until the end of November. At the beginning of the coming year, they will discuss leaf pick up for next year. He will look for machines and options when he goes to the League of Municipalities Convention. They are also looking to do long term planning. Leaf pick up this year will be the same as last year. Mayor Cooper stated that it is important to get the word out to the community that they keep everything other than leaves out of the piles that are in the street. That is what damages the machine. Cathy Leach noted that she posted that on the website and did receive comments that they understood.

Mayor Cooper stated that there is a letter from OSHA. William Sullivan stated that he will look into it. Brenda Shepherd noted that the work was completed but someone needs to certify that it was done. Mike Reino originally contacted the company that installed the new system and they came back to put in the check valve but no one has signed off that the work was done. Mayor Cooper stated that we need to have the appropriate person sign off on that certification.

Mayor Cooper also noted that something came up in the last few days regarding the fans in the restrooms here at Borough Hall. William Sullivan stated that he will notify Public Works.

Cathy Leach reported that it was brought to her attention that there is some vulgar graffiti inside the playground equipment. She is not sure what we can do to prevent it. Mike Reino does use a sharpie to cover graffiti up if he sees it. He tries to catch it as it comes up. She appreciates the help of the community to help remove it or notify us. If you see someone doing it, let us know. There is paint you can use that does not allow graffiti. If the paint is preventative, it may be worth investing. Mayor Cooper stated that resident of Tinicum Township whose family uses the park recommended starting a campaign to replace the equipment. Mayor Cooper informed him that the Borough plans to inventory the parks and come up with a Parks Plan. The Tinicum resident volunteered to be part of that.

Seth A. Grossman reported that the Downtown Revitalization Committee is finished with the planning process. He is putting a significant report together and hopes to have that within several weeks. They plan to hold a community meeting at Borough Hall so the public can comment on it to get community input. There may be aspects that may need to be addressed, etc. Communities are helpful in that regard. After that is completed, the report will be presented to Council.

Brad Myhre reported that the Police Department will be helping with the Halloween parade and Trick or Treat.

Brad Myhre stated that he will notify the Police Department about the graffiti in the park to see if we can get extra patrols there. It is an ongoing problem.

Brad Myhre also reported that we had questions about the key boxes and he just got information from the Police Department tonight and he will review that and report back to Council on that process.

### **MAYOR'S COMMENTS**

Mayor Cooper commented that the Book Garden is under new ownership and they will be having an open house this Saturday from 1 to 6 pm. There will be events including local and non local public readings.

Mayor Cooper reported that Bonnie Pariser and he are getting married on October 21<sup>st</sup>. He invited everyone to join them here at Borough Hall and then for a town picnic at the Borough Park. Bring your own chair or blanket and food.

### **CORRESPONDENCE**

Mayor Cooper requested to discuss the Steve Jelley issue. William Sullivan recused himself from this part of the meeting. Attorney Cruz asked Mr. Jelley to come up and answer a few questions so he can understand his request. Responding to Attorney Cruz, Mr. Jelley noted that there is a gas line in the street and he is requesting a lateral or pipe from his home to the street. This is a new pipe. It is not a replacement of an old pipe. Mr. Jelley also noted that they will be cutting across the lawn and going under the sidewalk. Also responding to Attorney Cruz as to where the pipe is in relation to the line in the street, Mr. Jelley stated that the line in the street is 2 to 3 feet from the edge of his lawn. The trench from his house to the pipe in the street is going to be 18 to 24 inches wide. Mr. Jelley noted that when he said he would be fined, that came from Elizabethtown Gas Company. Attorney Cruz stated that a fine is not imposed automatically. Someone has to do something wrong and then you are taken to court. Usually, this body does not impose fines. It may be that it is not a fine but a performance guarantee to insure that the work is done properly and repaired properly. Attorney Cruz asked Mr. Jelley that if there is a performance guarantee to be posted, do you have an objection to posting a performance guarantee for the work? The purpose of the security is to make sure that the repair is done properly and that the town is protected and the street is returned to proper repair. Mr. Jelley stated that it was there hope that the intent was for that purpose and not a fine just by virtue of the fact that the street had to be accessed. Attorney Cruz explained for clarity that no damage will be done to the sidewalk. Mr. Jelley stated that they open down to the line and then there is a process where they drill through underground, they will not disrupt our lawn until it comes up to the house where there will be one hole in the street and one on the property next to the house. Everything else is subterranean. Responding to Attorney Cruz as to the tap from the lateral into the main line, Mr. Jelley stated that it is his understanding that they expose it, insert something into it, drill the line through, connect the two and they are done. Attorney Cruz asked if he had any objection to posting a bond? Mr. Jelley stated that he has no objection to posting a bond. Attorney Cruz asked him if the Borough Engineer required additional repair, would he have an objection to

using that cash to make additional repairs. Mr. Jelley had no objection if the road was not returned back to suitable status. Attorney Cruz stated that the purpose of the performance guarantee or bond is to have the work be done properly. If the work is done properly, there is no reason for a reduction. If the work is not done properly, there would be a reason for a reduction. Mr. Jelley has agreed to all of that. Responding to Brad Myhre, Attorney Cruz stated that what would be needed is a road opening permit which is usually done by the engineering department. The engineer should have that information and how the work is going to be done and what the repair is going to be. There is a type of patch you can utilize on a road that is more expensive but creates a fairly good seal. You would want your engineer to tell you what that is. It is not just your typical asphalt patch.

Attorney Cruz reviewed the resolution and noted that the resolution says fee not fine. The intent is a performance guarantee and it would be appropriate to charge a performance guarantee and escrow fees so that your engineer would do the necessary issuance of permits and inspections and the Borough would not be responsible for that charge. There would be a separate escrow fee for the engineer's services. Brad Myhre stated that he would like to know how Borough has been doing it. Attorney Cruz advised the Council to look at the circumstances and use your judgment whether or not it is appropriate to waive the ordinance prohibiting work in street. The Mayor wanted to have a broader discussion which may address this situation. Seth A. Grossman would like to address this particular issue this evening if it is within our power. Mayor Cooper asked if the Council would be willing to grant the Jelley's the ability to move forward based on the Jelleys posting the performance guarantee of \$5,000.00 and pay an escrow fee to offset the engineering expense of inspections, etc. Mr. Jelley agreed to post a performance bond in the amount of \$5,000.00 and an escrow fee for the engineering services. Attorney Cruz recommended that the Council take a formal vote because you would be waiving one of your own ordinances. On motion by Seth A. Grossman, seconded by Cathy Leach and carried by unanimous favorable roll call vote, the Mayor and Common Council approved to grant a road opening permit and waive the prohibition of opening lower Fifth Street conditioned on Mr. Jelley posting a performance bond in the amount of \$5,000.00 and posting an escrow with the Borough in an amount to be determined by the engineer for engineering services.

William Sullivan returned to the meeting.

Mayor Cooper reported that we have received requests from 2 taxpayers to waive interest fees on their taxes. Subsequent to a brief discussion on the requests, Attorney Cruz recommended that the Council get more information from the tax collector. Mayor Cooper stated that he will get more information from the tax collector and bring the requests back to Council at the next meeting.

#### **ADJOURNMENT**

Being no further business to come before the Mayor and Council, a motion was made by Michele Liebttag and second by Michele Brad Myhre to adjourn the meeting at 9:00 pm. Motion carried by favorable voice vote.

Respectfully submitted,

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Brenda Shepherd, RMC

Borough Clerk