

May 19, 2010

**TOWNSHIP OF MILLSTONE**

**MAY 19, 2010**

**Mayor Grbelja calls the meeting to order at 7:04P.M.**

**ROLL CALL:** Mayor Nancy Grbelja – present, Committeeman Dorfman –present, Committeeman Kinsey – present, Committeeman Kuczinski – arrives at 7:07pm, Committeeman Masci – present. Also in attendance – Attorney – Duane Davison, Engineer – Matt Shafai, Administrator - James Pickering and Municipal Clerk – Maria Dellasala.

**STATEMENT OF NOTICE AS REQUIRED BY P.L. 1975, C231 IS READ.**  
**I HEREBY ANNOUNCE THAT PURSUANT TO THE OPEN PUBLIC MEETING ACT, ADEQUATE NOTICE OF THIS MEETING HAS BEEN PROVIDED IN THE ANNUAL NOTICE OF MEETINGS WHICH WAS MAILED TO THE ASBURY PARK PRESS AND THE MESSENGER PRESS, POSTED ON THE PUBLIC ANNOUNCEMENTS BULLETIN BOARD IN TOWN HALL AND FILED IN THE OFFICE OF THE TOWNSHIP CLERK ON DECEMBER 16, 2009.**

**RESOLUTION 10-98 AUTHORIZING THE HOLDING OF AN EXECUTIVE SESSION AT, WHICH THE PUBLIC SHALL BE EXCLUDED.**

C/Kinsey offered the following resolution and moved its adoption, which was second by C/Dorfman.

WHEREAS, N.J.S.A. 10:4-13 of the Open Public Meetings Act permits the exclusion of the public from meetings of public bodies in certain circumstances which are set forth in N.J.S.A. 10:4-12 (b); and

WHEREAS, the Township Committee of the Township of Millstone is of the opinion that such circumstances presently exist.

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

The public shall be excluded for the discussion of any action upon the here in after specified matter.

The general nature of the subject matter to be discussed is as follows:

- Contracts
- Land Acquisition
- Items falling under Attorney/Client Privilege
- Personal

It is anticipated at this time that the above stated subject matter will be made public in approximately six months or when any litigation discussed is resolved.

This resolution will take effect immediately.

**VOTE:**

AYES: C/Dorfman, C/Kinsey, C/Masci, M/Grbelja

NAYS: None

ABSTAIN: None

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ABSENT: C/Kuczinski arrives at 7:07pm

Executive session began 7:05p.m

Motion to adjourn Executive Session Moved C/Kinsey, Seconded C/Masci. ©

Time Out 7:55pm.

**MAYOR GRBELJA CALLS THE REGULAR MEETING TO ORDER AT 8:05 P.M. FOLLOWED BY A FLAG SALUTE AND A MOMENT OF SILENCE.**

**PROCLAMATION: EMS WEEK**

*Proclaiming the Week of May 16-22, 2010, as Emergency Medical Services Week*

**WHEREAS**, emergency medical services is a vital public service; and

**WHEREAS**, the members of emergency medical services teams are ready to provide lifesaving care to those in need 24 hours a day, seven days a week; and

**WHEREAS**, access to quality emergency care dramatically improves the survival and recovery rate of those who experience sudden illness or injury; and

**WHEREAS**, the emergency medical services system consists of emergency physicians, emergency nurses, emergency medical technicians, paramedics, firefighters, educators, administrators and others; and

**WHEREAS**, the members of emergency medical services teams, whether career or volunteer, engage in thousands of hours of specialized training and continuing education to enhance their lifesaving skills; and

**WHEREAS**, it is appropriate to recognize the value and the accomplishments of emergency medical services providers by designating Emergency Medical Services Week; now

**THEREFORE, I Nancy A. Grbelja, Mayor of the Township of Millstone in recognition of this event do hereby proclaim the week of May 16-22, 2010, as**

**EMERGENCY MEDICAL SERVICES WEEK**

*With the theme, EMS: Anytime, Anywhere, We'll Be There, I encourage the community to observe this week with appropriate programs, ceremonies and activities.*

*Proclaimed this the 19<sup>th</sup> day of May 2010.*

*Nancy Grbelja, Mayor*

**CORRESPONDENCE:**

1. Letter received from Monmouth County Planning Board thanking Millstone Township for hosting the Panhandle Regional Collaborative Meeting #5.

**ORDINANCES**

**ORDINANCE 10-12**

**SECOND READING** ORDINANCE AMENDING CHAPTER XXXV (LAND USE), ARTICLE II (DEFINITIONS), SECTION 2-2 (SPECIFIC DEFINITIONS); ARTICLE IV (REGULATIONS APPLICABLE TO ALL ZONING DISTRICTS), SECTION 4-7 (PRESERVATION OF NATURAL FEATURES), SUBSECTION 4-7.3 (NATURAL FEATURES TO BE RETAINED; EXCEPTIONS); ARTICLE IX (DEVELOPMENT APPLICATION REQUIREMENTS), SCHEDULE 4 (DOCUMENTS REQUIRED TO BE SUBMITTED), SUBSECTION IV (PROJECT USE), AND SUBSECTION V (CRITERIA FOR

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DETERMINING THE NEED FOR A STATEMENT OF ENVIRONMENTAL IMPACT AND ASSESSMENT (SEIA) TO THE LAND DEVELOPMENT APPLICATION; APPENDIX A (COMPLETENESS CHECKLIST) (SUBSECTION 9-3.4); ARTICLE V (ZONING DISTRICT REGULATIONS), SECTION 5-6A (RU-P PRESERVATION ZONE), SUBSECTION 5-6A.6 (FARMLAND/OPEN SPACE CONSERVATION CLUSTERS IN THE RU-P DISTRICT); ARTICLE V (ZONING DISTRICT REGULATIONS), SECTION 5-6B (RU-C RURAL CONSERVATION ZONE), SUBSECTION 5-6B.6 (FARMLAND/OPEN SPACE CONSERVATION CLUSTERS IN THE RU-C DISTRICT); ARTICLE IX (DEVELOPMENT APPLICATION REQUIREMENTS), SECTION 9-3 (STATEMENT OF ENVIRONMENTAL IMPACT AND ASSESSMENT STATEMENT); ARTICLE XI, DESIGN AND PERFORMANCE STANDARDS AND CONSTRUCTION SPECIFICATIONS), SECTION 11-13 (EASEMENTS AND WILDLIFE CORRIDORS); ARTICLE XI, DESIGN AND PERFORMANCE STANDARDS AND CONSTRUCTION SPECIFICATIONS), SECTION 11-24 (STEEP SLOPE BUFFER REQUIREMENTS); ARTICLE XI, DESIGN AND PERFORMANCE STANDARDS AND CONSTRUCTION SPECIFICATIONS), BY CREATING SECTION 11-33 (THREATENED AND ENDANGERED SPECIES) OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF MILLSTONE, COUNTY OF MONMOUTH, STATE OF NEW JERSEY.

**EXPLANATORY STATEMENT:** This Ordinance (1) adds endangered species, suitable habitat and threatened species to Section 2-2, Specific Definitions, of the Land Use Ordinances; (2) includes endangered or threatened species as a natural feature to be retained in the Preservation of Natural Features section of the Township's Land Use Ordinances; (3) adds additional criteria to be included in the Land Use Development Application of the Development Regulations, Section IV, Project Use and Section V, Criteria for Determining the Need for a Statement of Environmental Impact and Assessment (SEIA); (4) adds additional criteria to be included in Appendix A (Subsection 9-3.4), Completeness Checklist, Statement of Environmental Impact and Assessment (SEIA) regarding threatened and endangered species; (5) includes endangered or threatened species habitat to be preserved in the RU-P zoning district and in the Design Provision for Farmland/Open Space Conservation Clusters; (6) includes endangered or threatened species habitat to be preserved in the RU-C zoning district and in the Design Provision for Farmland/Open Space Conservation Clusters within that zone; (7) amends the requirements/conditions of a Statement of Environmental Impact and Assessment Statement to include endangered and threatened species/habitat for development applications; (8) amends the requirements regarding easement and wildlife corridors located in various types of easements located within the Township and further provides certain prohibited activities within the various easements. It further requires that an Easement Use Permit must be obtained for any proposed activity in any easement; (9) deletes the condition that major subdivision applications comply with steep slope buffer requirements thereby making any property subject to the requirements set forth in the section in regard to steep slope buffer requirements; (10) creates a Threatened and Endangered Species Ordinance, within the Township's Land Use and Development Regulations.

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Affidavit of publication presented.

Mayor Grbelja opens the public hearing at 8:13 p.m.

1. Testimony on Millstone Township Ordinance No. 10-12

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Good Evening. My name is Dwight Pittenger. I am the president of the Shore Builders Association of Central New Jersey. Our organization is comprised of hundreds of builders, contractors and associated workers involved in providing shelter and housing for residents throughout Monmouth, Middlesex, Mercer, and Ocean Counties. I am appearing tonight on behalf of the Shore Builders Association of Central New Jersey along with our counsel, Paul Schneider of Giordano, Halleran and Ciesla, to note our objections and concerns to proposed Ordinance No. 10-12. We urge that you do not adopt the ordinance.

Our concerns are threefold. First, we believe the ordinance exceeds the Township's authority under the Municipal Land Use Law, is beyond the Township's expertise, and is otherwise ill advised. Second, there are aspects of the ordinance that are clearly preempted by State law. Third, the proposed ordinance is ambiguous, inconsistent and lacks adequate standards.

The threatened and endangered species provisions of the ordinance would create restrictions on development far more onerous and restrictive than those that apply in the most environmentally sensitive areas of our State, such as the Pinelands. The general references in the Municipal Land Use Law to conservation of natural resources simply do not provide authority for such a broad and restrictive regulatory scheme. The fact that the Legislature has specifically delegated to the Department of Environmental Protection extensive authority to regulate development that affects threatened or endangered species and their habitat supports our conclusion that municipalities lack authority in this field. Indeed, we believe that State regulation in this field is so pervasive that it may preempt municipal regulation altogether, other than perhaps to assure compliance with State requirements.

Nowhere is this more apparent than in the case of freshwater wetlands. A key focus of the Freshwater Wetlands Protection Act is protection of threatened and endangered species and their habitat. In fact, the criteria for determining whether wetlands are of "exceptional resource value" and thus require the largest possible buffer, are based upon habitat for threatened and endangered species. Any attempt to regulate wetlands species is clearly preempted.

The proposed ordinance is draconian in scope. The ordinance defines "*suitable habitat*" as "*habitat that contains sufficient vegetative cover and food supply to sustain the needs of a particular threatened or endangered species.*" Yet even the Pinelands Commission recognizes that development may occur in suitable habitat when that habitat is not needed for the survival of the local population of the species. The Pinelands Comprehensive Management Plan allows development that is "*designed to avoid irreversible adverse impacts on habitats that are critical to the survival of any local populations of threatened or endangered species.*" *Under Millstone's proposed ordinance, however, the Planning Board*

*could preclude a property owner from constructing a home on a site with habitat, even if the development is limited to habitat that is not needed by the local population of that species, and therefore would be permitted in the New Jersey Pinelands.*

If Millstone insists upon adopting an ordinance regulating habitat for threatened and endangered species, at the minimum it should adopt the "critical habitat" approach that prevails in the New Jersey Pinelands.

Another flaw in the ordinance is the inconsistency between the definition of "suitable habitat" found in the proposed amendments to Section 2-2, and the use of a different term -- "endangered or threatened species habitat" -- elsewhere throughout the ordinance. It is the undefined and potentially broader term "endangered or threatened species habitat" that is used in operative provisions of the ordinance. For example, proposed Section 4-7.3 would require preservation of "endangered or threatened species habitat" without limiting this to "suitable habitat". Likewise, Section 11-13.2 requires conservation easements for areas that are "endangered or threatened species habitat", again without the further qualification that the habitat be "suitable".

Several other sections of the ordinance also use the undefined term "endangered or threatened species habitat" rather than the defined term "suitable habitat".

Additionally, the definitions of "threatened species" and "endangered species" should be clarified to specify that these are only the species officially designated by DEP as threatened or endangered. The ambiguous definitions in the proposed ordinance suggest that a species abundant in the State of New Jersey could be deemed "threatened" or "endangered" based solely on its status in Millstone Township.

Also objectionable is the proposal to establish an official list of those permitted to conduct surveys of threatened and endangered species. For example, Section 11-33.2, states that the Township will maintain a list of qualified surveyors as recognized by the U.S. Fish & Wildlife Service and the DEP's Endangered and Non-Game Species Program. However, the fact is that DEP's Endangered and Non-game Species Program does not have an official list of "qualified surveyors".

That same section of the ordinance would require an individual who wants to be added to the Township's list qualified surveyors to submit a threatened and endangered species survey report *"that has been approved by a Federal or State agency . . . such as the Pinelands Commission or DEP 's Endangered and Non-game Species Program"*. While the Pinelands Commission and DEP certainly do review threatened and endangered species reports, there is no process whereby these agencies formally "approve" such reports.

The proposed ordinance goes on to state that the Environmental Commission will review these reports and determine whether the surveyor shall be approved and included on the Township's list. But the ordinance has no standards or criteria whatsoever for determining whether a surveyor will be approved. This lack of standards and criteria for the Environmental Commission to apply in determining who is a "qualified surveyor" is unacceptable.

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In fact, the whole idea of an official list of qualified surveyors should be scrapped. It invites favoritism and abuse. The Township has no authority to, in essence, establish a licensing program for individuals doing threatened and endangered species surveys.

Another unduly vague provision is the term "*within close proximity to the site.*" For example, proposed sections 9-3.4 and 11-33.2 and others speak of threatened and endangered species found "*within close proximity*" to a site. Once again, the ordinance is flawed because there are no criteria or standards establishing what is meant by "*within close proximity*".

Section 11-33.3 calls for the Board Engineer and the Township Environmental Commission to provide recommendations to the Board on the results of the threatened and endangered species investigation.

But again, the ordinance is defective because there are no standards or criteria whatsoever to guide these recommendations.

Section 11-33.4 requires conservation areas to extend 15 feet around the buffer of habitat. There is no basis whatsoever for establishing such a buffer.

My prior comments have focused on the sections of the ordinance dealing with habitat for threatened or endangered species. Yet there are other provisions of the ordinance that do not directly relate to threatened and endangered species but, instead, to freshwater wetlands. These other provisions clearly contravene the Freshwater Wetlands Protection Act, which expressly precludes all municipal regulation of freshwater wetlands.

Proposed Section 11-13.2 adds "*wetlands and associated buffers*" to the list of areas for which the Township may require a conservation easement. Likewise, a new Section 11-13.6 would prohibit the "*filling in . . . wetlands*" in conservation easement areas. These are new provisions not previously in the Township's ordinance. A requirement that freshwater wetlands be restricted by conservation easements, and a requirement that there be no filling in these wetlands, directly regulate freshwater wetlands and thus violate the Freshwater Wetlands Protection Act.

We respectfully urge that the Committee leave the regulation of threatened and endangered species habitat to DEP. But if Millstone Township insists on regulating in this area, it should substantially revise this ordinance first. Thank you for the opportunity to speak this evening.

Mayor Grbelja closes the public hearing at 8:39 p.m.

Motion to adopt on second reading, Moved C/Kuczinski, Second M/Grbelja. Committee Discussion:

VOTE:

AYES: C/Masci, C/Dorfman, C/Kinsey, C/Kuczinski, M/Grbelja

NAYS: None

ABSTAIN: None

ABSENT: None

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**ORDINANCE 10-13**  
**FIRST READING**  
BLOCK 52, LOT 14.

**ORDINANCE AUTHORIZING PURCHASE OF OPEN SPACE**

**EXPLANATORY STATEMENT:** This Ordinance provides for the purchase by the Township of Millstone of property known as Block 52, Lot 14 from William E. Antonides with the possible financial assistance of the State of New Jersey, Department of Environmental Protection, Green Acres Program and/or the County of Monmouth.

Motion to adopt on first reading and authorize publication of same,

Moved C/Dorfman, Second C/Masci.  
Committee Discussion: None

VOTE:

AYES: C/Dorfman, C/Kuczinski, C/Kinsey, C/Masci, M/Grbelja

NAYS: None

ABSTAIN: None

ABSENT: None

Second reading and Public Hearing to be held on June 16, 2010 at 8:00 p.m. at the Millstone Township Meeting Room, 215 Millstone Road, Perrineville, New Jersey.

**ORDINANCE 10-14**

**FIRST READING** AN ORDINANCE GRANTING MUNICIPAL CONSENT FOR THE OPERATION OF A CABLE TELEVISION SYSTEM WITHIN THE TOWNSHIP OF MILLSTONE, NEW JERSEY TO CABLEVISION OF MONMOUTH, LLC.

**EXPLANATORY STATEMENT:** This ordinance hereby replaces the existing cable television franchise ordinance.

Motion to adopt on first reading and authorize publication of same,

Moved C/Masci, Second C/Dorfman.  
Committee Discussion: None

VOTE:

AYES: C/Kinsey, C/Kuczinski, C/Masci, C/Dorfman, M/Grbelja

NAYS: None

ABSTAIN: None

ABSENT: None

Second reading and Public Hearing to be held on June 16, 2010 at 8:00 p.m. at the Millstone Township Meeting Room, 215 Millstone Road, Perrineville, New Jersey.

**ORDINANCE 10-15**

**FIRST READING** ORDINANCE TO EXCEED THE MUNICIPAL BUDGET

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APPROPRIATION LIMITS AND TO ESTABLISH A CAP BANK (N.J.S.A. 40A:4-45.14).

**EXPLANATORY STATEMENT:** This ordinance authorizes an increase to 3.5% over the previous year's final appropriations.

Motion to adopt on first reading and authorize publication of same,

Moved C/Kinsey, Second C/Dorfman.

Committee Discussion:

VOTE:

AYES: C/Kuczinski, C/Masci, C/Dorfman, C/Kinsey, M/Grbelja

NAYS: None

ABSTAIN: None

ABSENT: None

Second reading and Public Hearing to be held on June 16, 2010 at 8:00 p.m. at the Millstone Township Meeting Room, 215 Millstone Road, Perrineville, New Jersey.

**ORDINANCE 10-16**

**FIRST READING** ORDINANCE AMENDING CHAPTER V, (FEES), SECTION 5-28 (FEES FOR FARMER'S MARKET) OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF MILLSTONE, COUNTY OF MONMOUTH, STATE OF NEW JERSEY.

**EXPLANATORY STATEMENT**

This Ordinance establishes a rate for the payment of the services of a Farm Market Manager and further establishes that the fees payable to the Farm Market Manager shall be paid from the vendor fees collected.

Motion to adopt on first reading and authorize publication of same,

Moved C/Kuczinski, Second C/Masci.

Committee Discussion: None

VOTE:

AYES: C/Masci, C/Dorfman, C/Kinsey, C/Kuczinski, M/Grbelja

NAYS: None

ABSTAIN: None

ABSENT: None

Second reading and Public Hearing to be held on June 16, 2010 at 8:00 p.m. at the Millstone Township Meeting Room, 215 Millstone Road, Perrineville, New Jersey.

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**RESOLUTION:**

10-99 Resolution: **INTRODUCTION OF THE 2010 MUNICIPAL BUDGET:**

Motion to adopt, Moved C/Kinsey, Second C/Masci.

Committee Discussion:

VOTE:

AYES: C/Masci, C/Dorfman, C/Kinsey, C/Kuczinski, M/Grbelja

NAYS: None

ABSTAIN: None

ABSENT: None

Public Hearing to be held on June 16, 2010 at 8:00 p.m. at the Millstone Township Meeting Room, 215 Millstone Road, Perrineville, NJ 08535

**C D B G: Public Hearing** ADA Restroom Facility at Lee Farm.

M/Grbelja opens the meeting to the public at 8:54pm.

No Public Comment.

M/Grbelja closes the meeting to the public at 8:54pm.

C/Kinsey states this is the same project that we applied for last year.

10-100 Resolution authorizing the Township of Millstone to apply for a Community Development Block Grant from the County of Monmouth for ADA Restroom Facility at Lee Farm.

Motion to adopt, Moved C/Kinsey, Second C/Dorfman.

Committee Discussion:

VOTE:

AYES: C/Kinsey, C/Kuczinski, C/Masci, C/Dorfman, M/Grbelja

NAYS: None

ABSTAIN: None

ABSENT: None

**RESOLUTIONS: CONSENT RESOLUTION POSTED ON BULLETIN BOARD.**  
**ALL MATTERS LISTED UNDER ITEM "CONSENT AGENDA" ARE CONSIDERED ROUTINE BY THE TOWNSHIP COMMITTEE AND WILL BE ENACTED BY ONE (1) MOTION IN THE FORM LISTED BELOW. THERE WILL BE NO SEPARATE DISCUSSION ON THESE ITEMS, IF DISCUSSION IS DESIRED OF ANY ITEM, THAT ITEM WILL BE CONSIDERED SEPARATELY.**

10-101 Payment of vouchers.

10-102 Resolution awarding contract for Combined Survey with Corner Markers for Block 52 Lot 2 and Block 52 Lot 14.

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10-103 Resolution Appointing Plumbing Sub Code-Official/Plumbing Inspector HHS.

10-104 Resolution authorizing release of Performance Guarantees for DJ'S Mechanical, Site Plan No. P03-40 (Block 16.01, Lot 2).

Motion to adopt, Moved C/Kinsey, Second C/Kuczinski.

Committee Discussion:

VOTE:

AYES: C/Kinsey, C/Kuczinski, C/Masci, C/Dorfman, M/Grbelja

NAYS: None

ABSTAIN: None

ABSENT: None

**REPORTS FROM VARIOUS DEPARTMENTS FOR APRIL 2010:**

Tax Collector	\$2,361,993.48
Clerks report	\$ 1,258.90
Dog License	\$ 1,073.20
Recreation	\$ 99,700.00
Building Department	\$ 39,257.00
COAH	\$ 20,407.00
Municipal Court	\$ 39,328.75
2010 Interest Revenue	
Code Enforcement/Zoning & Recycling	

Motion to file, Moved C/Kinsey, Second C/Masci. ©

**TOWNSHIP COMMITTEE MINUTES:**

1. Regular Session and Executive Session April 21, 2010.
2. Regular & Executive Session May 5, 2010

Motion to adopt, Moved C/Kinsey, Second C/Kuczinski.

Committee Discussion:

VOTE:

AYES: C/Kuczinski, C/Masci, C/Dorfman, C/Kinsey, M/Grbelja

NAYS: None

ABSTAIN: None

ABSENT: None

**PRIVILEGE OF THE FLOOR:**

Mayor Grbelja opens the meeting to the public at 9:45 p.m.

1. Ramon Recalde – Robbins Road South – Apologized again to the committee for coming to the Board of Education meeting, what happen to you at that meeting was appalling, he was embarrassed. He states it's unacceptable that someone is

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making money on our tax dollars, the attorney for the Board of Education should be removed. Mr. Racalde states that he should have advised the Board of Education not to sign the contract until the State Aid numbers were in. The people turned down the school budget in turn the Township Committee reviews it and makes recommendation. The Township Committee challenged the Board of Education on the budget with the cuts put forward and he commended the Committee with the cuts they made. The Board of Education needs to go back to the union and re-open the contract, to save jobs. Mr. Racalde also spoke about the Board of Education telling teachers not to respond to his e-mails. I've been going to Board meeting for the past 3 – 4 years, I have kids in the school system and states that he has lost faith in the Board.

2. Pat Butch – Prodelin Way – States that change is needed on the board of Education and hopefully next year new people will step forward and run for a seat on the Board. This current Board is responsible for the position we are in by approving a 10 ¼ percent increase over the next 2 years. There should be a 2 percent CAP. People in the township do not have faith in the Board of Education, they don't trust them. There were 1100 no votes and 869 yes votes. The township Committee did what they had to do which is best education for the dollar. There is always room for improvement and maybe we should check into Charter School.
3. Steve Lambros – Van Hise Drive – Thanks the Committee for its hard work on the school budget. There's not a better group of people to handle the Board of Education. You build confidence in the decisions you made. Unfortunately year after year the school budget fails and ends up in the committee lap. Hopefully the Board of Education will have the courage to stand their ground and re-open the union contract. Teachers should be looking out for each other.

Mayor Grbelja closes the meeting to the public at 10:39 p.m.

Motion to adjourn, Moved C/Kinsey, Second C/Dorfman. © Time Out 10:39 p.m.

Tapes of the meeting are available in the Municipal Clerk's Office.

May 19, 2010 minutes approved at a Township Committee meeting held on June 16, 2010.

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Maria Dellasala, RMC  
Township of Millstone