

January 17, 2023

Millburn Township Committee Meeting Minutes

Minutes of the Regular Meeting of the Township Committee of the Township of Millburn, in Essex County, New Jersey, held in Town Hall starting at 7:00 PM on the above date.

Mayor Miggins opened the meeting and read the following statement: In accordance with Section 5 of the Open Meetings Act, Chapter 231, Public Laws, 1975, be advised that notice of this meeting was made by posting on the Bulletin Board, Town Hall, and serving the officially designated newspapers, a notice stating that this meeting would take place at the Town Hall at 7:00 PM on January 17, 2023. Meeting details and the draft agenda were also posted on our Township website.

Mayor Miggins asked all those present to stand for the Salute to the Flag.

Upon call of the roll, the following Committee members were recorded present: Michael Cohen, Tara Prupis, Annette Romano, Sanjeev Vinayak, and Maggee Miggins

Also present were Business Administrator Alexander McDonald, Township Counsel Joseph Maraziti, Assistant Business Administrator Jesse Moehlman and Municipal Clerk Christine Gatti.

Approval of Agenda

Mayor Miggins requested a motion to approve the agenda. The motion was made by Mr. Cohen and seconded by Ms. Romano. Vote: All Ayes

Minutes

Mayor Miggins asked for a motion to approve the September 20, 2022 Regular Township Committee meeting minutes. The motion was made by Mr. Vinayak and seconded by Ms. Prupis. Vote: All Ayes

Mayor Miggins asked for a motion to approve the October 3, 2022 Regular Township Committee meeting minutes. The motion was made by Ms. Prupis and seconded by Mr. Vinayak. Vote: All Ayes

Reports

Ms. Prupis reported that the Two-way Traffic Sub-Committee met and reviewed the report for Essex Street that was distributed in December. She noted that there would be another meeting as soon as the questions brought up at that meeting were answered and Colliers would present at a future public meeting. She added that Spring Street would also be reviewed for a two-way traffic pattern.

Mr. Cohen reported that the Cultural Arts Committee met and reviewed their upcoming activities and event.

Mr. McDonald announced there would be a meeting on January 24, 9am at town hall to discuss improvements to Lot 14. Local impacted businesses have been invited to attend to provide input on the conceptual plans that were provided. He added that if a business owner could not make this meeting, they should submit their questions and comments prior to the meeting.

Mr. McDonald updated the Township Committee on commercial garbage pickup. He stated that a letter was sent out to the businesses affected advising them that they'll need to arrange for private pickup.

Mayor Miggins reported she met with the Recreation Committee and advised everyone that they should stay off the ice in the park for their safety as well as the safety of first responders. She added that the pond needed five days of sub-cold temperatures to freeze over.

Mayor Miggins noted that she had received numerous complaints about speeding and illegal passing and noted that police would be out in the community ticketing.

Special Report

Affordable Housing Report

Mr. Jarrid Kantor, Special Counsel for Affordable Housing, advised that he was engaged by the Township to continue compliance and attempt to renegotiate the settlement agreement that was previously approved by the township. He reviewed the settlement agreement and specifically the proposed 100 percent affordable housing site on Main Street. He stated that Fair Share Housing would not be not interested in renegotiating this site advising that Millburn is required to live up to this agreement or it would be enforced. He added he was before the court on January 13th and believed the township would not be looked at favorably if they did not comply. He reviewed various zone overlays, many of which have been adopted by the Township Committee. He advised that there were ongoing discussions with Fair Share Housing on the overlays. He elaborated on what the township needed to do to avoid having a special master appointed to the township to oversee compliance, which would be at the township's expense. He stated that compliance included the Township Committee adopting the housing element and fair share plan, adopting a Canoe Brook overlay ordinance, adopting a spending plan, adopting a resolution of intent to fund any shortfalls, adopting the rental and sale operating manual, adopting the RPM Developers Agreement for the DPW site, and adopting a rehab operating manual. He stated that the township's hearing was scheduled for February 28; he did have a meeting in court scheduled for February 3 to discuss the progress the township had made and he would report back afterwards.

Mr. Vinayak asked how they know if the contract with RPM was the best contract they could get. Mr. Maraziti advised that RPM was previously designated by a resolution passed by the Township Committee as the developer, but there was not a contract until the Township Committee voted again on it. He added that he did not feel there would not be enough time to consider a different developer. Mr. Kantor noted RPM had submitted a letter of interest to the court.

Ms. Romano inquired about the rental manual and if anyone had a copy of it. Mr. Kantor explained he received it from Ms. McManus. Mr. McDonald reviewed the manual and that numbers were based on region and revised each year and stated that he would make it available to the Township Committee.

Ms. Prupis wondered if towns made the affordable housing funding information available to the public. Mr. McDonald confirmed it was. She asked if there would be a time for the public to ask questions. She felt it would be appropriate to allow the residents to have their questions answered. Mayor Miggins stated that it could be a possibility at a future public session.

Public Comment

Mayor Miggins made the following statement: "When invited to speak, please come to the lectern, clearly state your name and address, and speak loudly so that your comments may be understood by all and properly recorded. Whenever an audience or Committee member reads verbatim from a prepared statement, please email a copy to the Township Clerk's Office at townclerk@millburntwp.org. To help facilitate an orderly meeting and to permit all to be heard, speakers were asked to limit their comments to one 3-minute session. You would be prompted when there was 30 seconds remaining. Each individual would be given one opportunity to make their public comment. Please be patient and we would address each member of the public that wishes to speak. This was a business meeting, please do not address professionals or staff directly and direct all of your comments to me. A reminder that we were all neighbors and personal attacks would not be tolerated."

Mayor Miggins opened the public comment period.

Ben Stoller, resident, questioned why a segregated 100% affordable housing project would be built at the DPW site. He reviewed calculations and voiced his questions and concerns of the impact this would have on the community and why a pilot program was being used. He would like to have an open forum for the residents to ask questions and felt the township needed to fight back.

Jeffrey Feld, resident, voiced his thoughts and concerns on the fair share housing agreement, transparency and law and items on the bills list. He spoke of retention resolutions and wondered why there were resolutions on tonight ratifying various boards. He reviewed his thoughts and concerns regarding the audit, virtual meetings and rules of order for the Township Committee to operate. He questioned who makes the decisions on the open and fair process, non-open and fair and RFQ's. He would like to see the supplemental debt statement for the bond ordinance on for introduction tonight.

Frank Saccomandi, resident, discussed transparency, freedom of speech, and hearing residents' voices. He voiced his opinion on the Zoom option being eliminated and would like it to be reinstated. He reviewed questions regarding the fair share housing agreement, relocation and cost of moving the DPW site. He voiced various questions pertaining to the proposed 100% affordable housing site on the DPW site.

René Paparian, resident, stated that South Mountain was a walking street, but the traffic was very dangerous as the laws were not followed and felt this needed to be addressed. She was glad to hear enforcement would be increased. She voiced her thoughts and recommendations regarding the proposed affordable housing. She commented on citizens' rights.

Dennis Fabian, resident, voiced his concerns on the contaminated DPW site and he reviewed the environmental report. He made Mr. Kantor aware that Canoe Brook was on watershed land and the Environmental Protection Agency needed to say it was okay to continue on that site with affordable housing.

Glenn Paparian, resident, echoed Rene Paparian's comments on traffic and safety in South Mountain. He referred to Section 12e of the fair share housing settlement regarding the feasibility of the DPW site and added that he felt it was not a safe site due to the environmental studies and a different safe site should be considered. He commented on the zoning overlays, the B2 zone and questioned what was going on at the Annie Sez property.

David Cosgrove, resident, requested the Zoom meeting option be brought back. He thanked Mr. Kantor for trying to make changes to the overlay zones and felt people in the affected areas should be notified that they were in a zone being negotiated on so their concerns could be heard before changes could not be made.

Jerry Kung, resident, reviewed items in the settlement agreement and questioned the validity of the agreement since he heard that the agreement was signed under duress. He questioned the historical storage of police blotters and noted some missing periods. He inquired on how he could get a full report of the blotter and not just a snapshot. He reviewed his questions and concerns on environmental reporting of the DPW site and would also like to know if the Township Committee had done due diligence at the site.

Christine Best, resident, voiced her support of the Zoom meeting option to be returned. She reviewed her concerns regarding 5G and public safety issues and note her opposition to the installation of 5G towers in town and made recommendations on 5G.

Jean Pasternak, resident, suggested the use of Nixel to alert residents about crimes that were underway, a more real time notification of events. She noted that she attended the case management conference on fair share housing and reviewed highlights from the conference. She voiced her thoughts and asked what was being done about the court and having to re-educate a new attorney.

Richard Seibert, resident, voiced his comments regarding the recall election and the stealing of signs.

Linda Bloniarz, resident, voiced her support to reinstate the Zoom meeting option. She wondered if there was a communications manager for the township. She felt with the amount of things going on in town it was important to engage the community.

Seeing there were no additional comments, Mayor Miggins closed the public comment period.

Mr. Vinayak commented on communication and agreed it was important. He reviewed the numbers regarding fair share housing and proposed budget impact of children entering the school system from this housing development. He responded to various questions on the DPW site and explained what the current site consisted of and added that the DPW building would stay where it was and other parts would be moved to the JFK site. He noted that he did not like the news on affordable housing either and reminded the public that it was a state mandate. He reviewed his understanding of what was required if there was contamination on the site. He reviewed the process of applying for any committee if anyone was interested in volunteering.

Mayor Miggins called for a five-minute break.

Ms. Prupis agreed a remote option should be available and made a motion to reinstate having a remote option for Land Use Boards. No motion to second Ms. Prupis motion was offer; motion failed.

Ms. Prupis asked for clarification on how the 75 affordable housing units came about on top of the RDP (real estate development potential). Mr. McDonald stated that he believed it had something to do with the 1300 deficit. Ms. Prupis reiterated that the DPW building was not being moved. She brought up the gas situation and Mr. McDonald advised that the above ground tanks for gas would be installed for the use by the fire department and the township was looking into an agreement with Wawa for gas for the other township vehicles. She stated that the salt dome and the recycling center were the only parts that would need to be moved.

Ms. Prupis confirmed the township did have a communications coordinator to inform the public. She asked if the adjustments to the overlay zones could be discussed with the public at this point. Mr. Kantor explained it would be inappropriate to discuss it; it was given to the town as a confidential settlement transmission by fair share housing and it would be a violation since the town was in current litigation. Ms. Prupis questioned if the Annie Sez application had been submitted to the Planning Board. Mr. McDonald explained it had been submitted and once it's complete, it would go in front of the Planning Board.

Ms. Prupis asked about the historical police blotter and asked if it could be accessible. Mr. McDonald explained the police blotter history started in 2021 and was being built going forward. He added that it was available on the website.

Ms. Prupis wondered if Mr. McDonald had previously looked into Nixel. Mr. McDonald explained the police had the tools available to them to notify residents if they felt the residents were in danger and needed to be notified immediately.

Ms. Prupis asked for confirmation if a 5G consultant was hired and Mr. McDonald confirmed. He added the municipality does not control the regulation of this technology seeing it would be the FCC, but the township passed an ordinance in 2017 giving them some control over right-of-ways. He reviewed the

tasks of the consultant and that he would come and present at a future meeting. Ms. Prupis requested the public be able to comment at that presentation.

Ms. Prupis would like clarification on why the three boards were being ratified. Ms. Gatti advised that the resolutions were corrections to errors in terms in prior approvals by the Township Committee.

Ms. Prupis reviewed the traffic concerns in the South Mountain area. Mr. McDonald stated that would speak to the Police Chief. She brought up speed bumps being installed and Mr. McDonald advised that two had previously been installed and added that the formal procedure should be followed; educate the public, enforce and then engineering.

Ms. Prupis referenced the environmental testing done at the DPW site and Mr. McDonald confirmed with the environmental company that they conducted the appropriate tests for the site and it had been submitted to the DEP. Mr. Kantor confirmed fair share does not have any concern with the site. It was added that RPM would do their due diligence in the future.

Mr. Maraziti addressed who was considered an employee of the township. He believed this had to do with Ms. Romano's membership on a Local Assistance Board. Elected officials were employees of the township but that would not impact Ms. Romano serving on the Local Assistance Board.

Mr. Maraziti noted the Rules of Procedure which were adopted. It was clarified they were not adopted at the Organization meeting and do not expire.

Mr. Maraziti confirmed he did represent RPM many years ago on a project. He thoroughly researched the law and case law and firmly believed there is not a conflict of interest. He explained that negotiations would begin now that the proposed 75-unit affordable housing would be moving forward. One point that would be negotiated; payment in lieu of taxes in areas which were available under statute. He reviewed the environmental condition of the site and how there have been many other sites redeveloped that once were contaminated. He added that the site would be remediated and cleaned up prior to building and is required to meet DEP standards.

Mr. McDonald clarified the PATFA fund was run through the state for individuals in the town who were in need and there was no backup to protect the privacy of these individuals.

Consent Agenda

Mayor Miggins asked if any of the Committee members had any questions or concerns regarding consent agenda items. She noted a revision to Resolution 23-044. Mayor Miggins asked for a motion to approve the items on the consent agenda including Resolutions 23-039 through 23-048 and revised Resolution 23-044. Ms. Prupis made a motion to approve the consent agenda which was seconded by Mr. Cohen.

Roll Call Vote: All Ayes

RESOLUTION 23-039 APPROVE BILLS PAYABLE

RESOLVED that the Township Treasurer be and hereby is authorized to accept for payment and pay bills or items as they appear on Schedule dated January 17, 2023, in the following accounts:

General Fund	\$ 1,647,830.70
Capital Fund	180,869.25
Parking Utility - Operating Fund	7,171.61
Dog Fund Trust	1.20
Escrow Trust Fund	1,878.50

PATFA II

1,201.00

**RESOLUTION 23-040
AUTHORIZE THE REFUND OF TAX OVERPAYMENTS**

NOW, THEREFORE BE IT RESOLVED that the Treasurer of the Township of Millburn be and he is hereby Authorized and directed to the draw warrants to pay the payees listed below in the specified amounts;

<u>Make check payable to:</u>	<u>Type</u>	<u>Amount</u>
Patrick Boqi Wang & Huiqi V. Yin Skoloff & Wolfe P.C. 293 Eisenhower Parkway Livingston, NJ 07039 Block 3802 Lot 19 33 Lee Terrace	Tax Appeal 2019 Taxes (\$3,995.10) 2020 Taxes (\$3,986.82) 2021 Taxes (\$4,011.66)	\$11,993.58

**RESOLUTION 23-041
AUTHORIZING THE ADVERTISING OF BIDS –
MUNICIPAL POOL CONCESSION**

BE IT RESOLVED by the Township Committee of the Township of Millburn in the County of Essex, that the Township Clerk be and is hereby authorized and directed to advertise, as required by law, in the ITEM, a newspaper published in said Township, an Invitation to Bidders for sealed proposals to be received by the Township Clerk of the Township of Millburn in the County of Essex, New Jersey, for:

Municipal Pool Concession

BE IT FURTHER RESOLVED that the sealed proposals will be opened and read in public at Town Hall, Millburn, New Jersey at a date and time to be determined and in the event no bids are received at that time, then authorization to re-advertise is hereby directed.

**RESOLUTION 23-042
AUTHORIZING INTERLOCAL AGREEMENT ELECTRICAL SUBCODE OFFICIAL AND ELECTRICAL INSPECTOR
FOR MILLBURN AND MAPLEWOOD**

WHEREAS, the Township of Millburn ("Millburn") and the Township of Maplewood ("Maplewood") ("Collectively the Townships") have the need for an Electrical Subcode Official and Electrical Inspector; and

WHEREAS, the Townships do not have a need for a full time Electrical Subcode Official and Electrical Inspector; and

WHEREAS, the Townships agree to enter into an Interlocal Agreement whereby it is agreed to hire an appropriate person or corporation to provide the performance of such inspections as are usually performed by an Electrical Subcode Official and an Electrical Inspector.

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Millburn, County of Essex, State of New Jersey, that:

- 1) The Township of Millburn does hereby agree to enter into an Interlocal Agreement, in a form subject to the approval of the Township Attorney, with the Township of

Maplewood with regard to an Electrical Subcode Official and Electrical Inspector pursuant to the terms as set forth in the Agreement in the amount of \$64,310.00 for 2023, \$65,556.20 for 2024, \$66,827.32 for 2025 and \$68,123.87 for 2026;

- 2) The Mayor and the Municipal Clerk be and are hereby authorized to sign an Interlocal Agreement with the Township of Maplewood.

RESOLUTION 23-043
AUTHORIZING INTERLOCAL AGREEMENT
PLUMBING SUBCODE OFFICIAL AND PLUMBING INSPECTOR
FOR MILLBURN AND MAPLEWOOD

WHEREAS, the Township of Millburn ("Millburn") and the Township of Maplewood ("Maplewood") ("Collectively the Townships") have the need for a Plumbing Subcode Official and a Plumbing Inspector; and

WHEREAS, the Townships do not have a need for a full time Plumbing Subcode Official and Plumbing Inspector; and

WHEREAS, the Townships agree to enter into an Interlocal Agreement whereby it is agreed to hire an appropriate person or corporation to provide the performance of such inspections as are usually performed by a Plumbing Subcode Official and Plumbing Inspector.

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Millburn, County of Essex, State of New Jersey, that:

- 1) The Township of Millburn does hereby agree to enter into an Interlocal Agreement, in a form subject to the approval of the Township Attorney, with the Township of Maplewood with regard to a Plumbing Subcode Official and Plumbing Inspector pursuant to the terms as set forth in the Agreement in the amount of \$64,310.00 for 2023, \$65,556.20 for 2024, \$66,827.32 for 2025 and \$68,123.87 for 2026;
- 2) The Mayor and the Township Clerk be and are hereby authorized to sign the Interlocal Agreement with the Township of Maplewood.

RESOLUTION 23-044
PROVIDE FOR THE APPOINTMENT OF INDIVIDUALS TO THE
DISTRICT MANAGEMENT CORPORATION BOARD OF TRUSTEES

BE IT RESOLVED by the Township Committee in the Township of Millburn, in the County of Essex and State of New Jersey make the following appointment District Management Corporation Board of Trustees:

- 1.) Annette Romano, Township Committee Member, to a one-year term ending December 31, 2023
- 2.) Stephen Winer, Operator Trustee, to a three-year term expiration December 31, 2025
- 3.) Lex Clarke, Operator Trustee, to unexpired three-year term expiration December 31, 2023
- 4.) Alex McDonald, Business Administrator or Designee, to a one-year term expiration December 31, 2023 (*Nonvoting Ex Officio Member*)
- 5.) Richard Wasserman, Mayor or Designee, to a one-year term ending December 31, 2023 (*Nonvoting Ex Officio Member*)

BE IT FURTHER RESOLVED that this resolution of appointments replace the appointments to the appointment District Management Corporation Board of Trustees made at the January 3, 2023 Township Committee meeting.

RESOLUTION 23-045
CONFIRM APPOINTMENTS TO THE
HISTORIC PRESERVATION COMMISSION

BE IT RESOLVED that the Millburn Township Committee confirms and consents to the following Mayoral appointments to the Historic Preservation Commission:

- Elizabeth Wanga, Class A, reappointed to a four-year term ending December 31, 2026
- Jessica Glatt, Zoning Board of Adjustment Member, reappointed concurrent with her Zoning Board of Adjustment term ending December 31, 2026
- David Barton, Class C, appointed as Alternate #2, to a two-year term ending December 31, 2024

BE IT FURTHER RESOLVED that this resolution of appointments replace the appointments to the Historic Preservation Commission made at the January 3, 2023 Township Committee meeting.

RESOLUTION 23-046
ACKNOWLEDGE APPOINTMENTS TO THE ENVIRONMENTAL COMMISSION

BE IT RESOLVED that the Township Committee acknowledges the following Mayor's appointments to the Environmental Commission:

- Elizabeth Vollavanh reappointed to a three-year term ending December 31, 2025
- Deborah Nevas reappointed to a three-year term ending December 31, 2025
- Roger Timpson appointed to an unexpired three-year term ending December 31, 2023
- Kristen Brasil appointed as Alternate #1 to an unexpired term ending December 31, 2023
- Abigail Packman reappointed as Alternate #2 to a two-year term ending December 31, 2024

BE IT FURTHER RESOLVED that this resolution of appointments replace the appointments to the Environmental Commission made at the January 3, 2023 Township Committee meeting.

RESOLUTION 23-047
APPROVE RAFFLE LICENSES

WHEREAS, the following have submitted application to the Township Clerk to conduct a raffle, providing all required identification and the appropriate fees; and

WHEREAS, the Police Department is in receipt of a copy of the application per the regulation of the Legalized Games of Chance Control Commission.

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

Eva's Village
Summit Speech School

**RESOLUTION 23-048
RESOLUTION TO CLOSE SESSION**

WHEREAS, Section 8 of the Open Public Meetings Act, Chapter 231, P.L. 1975, permits the exclusion of the Public from a meeting under certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances do exist;

NOW, THEREFORE BE IT RESOLVED by the Township Committee of the Township of Millburn in the County of Essex, State of New Jersey, as follows:

1. The public shall be excluded from discussion of and action upon the hereinafter specified subject matters;

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

Litigation – Attorney Client Privileged Briefing on Pending Litigation / Involving the Declaratory Judgment Action, Fair Share Housing Center.

2. The minutes of the discussions shall be made public as soon as the matters under discussion are no longer of a confidential or sensitive nature.

Ordinances

Ordinance 2629-23

Mr. Vinayak brought forth Ordinance 2629-23 for introduction. Mr. McDonald explained due to the current condition of the fire truck, the purchase of this fire truck had been accelerated by two years and reviewed the funding. He reviewed the bond process and moved that the ordinance to be taken up and passed on first reading noting that the public hearing would take place on February 7, 2023, Ms. Prupis seconded the motion. Mayor Miggins requested a roll call vote.

Roll Call Vote: All Ayes

ORDINANCE NO. 2629-23

BOND ORDINANCE TO AUTHORIZE THE ACQUISITION OF A NEW LADDER FIRE TRUCK, INCLUDING ORIGINAL APPARATUS AND EQUIPMENT, IN, BY AND FOR THE TOWNSHIP OF MILLBURN, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY, TO APPROPRIATE THE SUM OF \$1,500,000 TO PAY THE COST THEREOF, TO MAKE A DOWN PAYMENT, TO AUTHORIZE THE ISSUANCE OF BONDS TO FINANCE SUCH APPROPRIATION AND TO PROVIDE FOR THE ISSUANCE OF BOND ANTICIPATION NOTES IN ANTICIPATION OF THE ISSUANCE OF SUCH BONDS

BE IT ORDAINED by the Township Committee of the Township of Millburn, in the County of Essex, State of New Jersey, as follows:

Section 1. The Township of Millburn, in the County of Essex, State of New Jersey (the "Township") is hereby authorized to acquire a new ladder fire truck, including original apparatus and equipment, in, by and for the Township. Said improvement shall include all work, materials, appurtenances and equipment necessary and suitable therefor.

Section 2. The sum of \$1,500,000 is hereby appropriated to the payment of the cost of making the improvement described in Section 1 hereof (hereinafter referred to as "purpose"). Said appropriation shall be met from the proceeds of the sale of the bonds authorized and the down

payment appropriated by this ordinance. Said improvement shall be made as a general improvement and no part of the cost thereof shall be assessed against property specially benefitted.

Section 3. It is hereby determined and stated that (1) said purpose is not a current expense of said Township, and (2) it is necessary to finance said purpose by the issuance of obligations of said Township pursuant to the Local Bond Law (Chapter 2 of Title 40A of the New Jersey Statutes Annotated, as amended; the "Local Bond Law"), and (3) the estimated cost of said purpose is \$1,500,000, and (4) \$825,000 of said sum is to be provided by the down payment hereinafter appropriated to finance said purpose, and (5) the estimated maximum amount of bonds or notes necessary to be issued for said purpose is \$675,000, and (6) the cost of such purpose, as hereinbefore stated, includes the aggregate amount of \$5,000 which is estimated to be necessary to finance the cost of such purpose, including architect's fees, accounting, engineering and inspection costs, legal expenses and other expenses, including interest on such obligations to the extent permitted by Section 20 of the Local Bond Law.

Section 4. It is hereby determined and stated that the sum of \$825,000 in the Township's Capital Reserve for Fire Equipment is now available to serve as the down payment on said purpose. The sum of \$825,000 is hereby appropriated from such moneys to the payment of the cost of said purpose.

Section 5. To finance said purpose, bonds of said Township of an aggregate principal amount not exceeding \$675,000 are hereby authorized to be issued pursuant to the Local Bond Law. Said bonds shall bear interest at a rate per annum as may be hereafter determined within the limitations prescribed by law. All matters with respect to said bonds not determined by this ordinance shall be determined by resolutions to be hereafter adopted.

Section 6. To finance said purpose, bond anticipation notes of said Township of an aggregate principal amount not exceeding \$675,000 are hereby authorized to be issued pursuant to the Local Bond Law in anticipation of the issuance of said bonds. In the event that bonds are issued pursuant to this ordinance, the aggregate amount of notes hereby authorized to be issued shall be reduced by an amount equal to the principal amount of the bonds so issued. If the aggregate amount of outstanding bonds and notes issued pursuant to this ordinance shall at any time exceed the sum first mentioned in this section, the moneys raised by the issuance of said bonds shall, to not less than the amount of such excess, be applied to the payment of such notes then outstanding.

Section 7. Each bond anticipation note issued pursuant to this ordinance shall be dated on or about the date of its issuance and shall be payable not more than one year from its date, shall bear interest at a rate per annum as may be hereafter determined within the limitations prescribed by law and may be renewed from time to time pursuant to and within limitations prescribed by the Local Bond Law. Each of said bond anticipation notes shall be signed by the Mayor and by a financial officer and shall be under the seal of said Township and attested by the Township Clerk or Deputy Township Clerk. Said officers are hereby authorized to execute said notes in such form as they may adopt in conformity with law. The power to determine any matters with respect to said notes not determined by this ordinance and also the power to sell said notes, is hereby delegated to the Chief Financial Officer who is hereby authorized to sell said notes either at one time or from time to time in the manner provided by law.

Section 8. It is hereby determined and declared that the period of usefulness of said purpose, according to its reasonable life, is a period of ten years computed from the date of said bonds.

Section 9. It is hereby determined and stated that the Supplemental Debt Statement required by the Local Bond Law has been duly made and filed in the office of the Township Clerk of said Township, and that such statement so filed shows that the gross debt of said Township, as defined in Section 43 of the Local Bond Law, is increased by this ordinance by \$675,000 and that the issuance of the bonds and notes authorized by this ordinance will be within all debt limitations prescribed by said Local Bond Law.

Section 10. Any funds received from the private parties, the County of Essex, the State of New Jersey or any of their agencies or any funds received from the United States of America or any of its agencies in aid of such purpose, shall be applied to the payment of the cost of such purpose, or, if bond anticipation notes have been issued, to the payment of the bond anticipation notes, and the amount of bonds authorized for such purpose shall be reduced accordingly.

Section 11. The capital budget is hereby amended to conform with the provisions of this ordinance to the extent of any inconsistency therewith and the resolutions promulgated by the Local Finance Board showing full detail of the amended capital budget and capital program as approved by the Director, Division of Local Government Services, is on file with the Township Clerk and is available for public inspection.

Section 12. The Township intends to issue the bonds or notes to finance the cost of the improvement described in Section 1 of this bond ordinance. If the Township incurs such costs prior to the issuance of the bonds or notes, the Township hereby states its reasonable expectation to reimburse itself for such expenditures with the proceeds of such bonds or notes in the maximum principal amount of bonds or notes authorized by this bond ordinance.

Section 13. The full faith and credit of the Township are hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this ordinance. Said obligations shall be direct, unlimited and general obligations of the Township, and the Township shall levy ad valorem taxes upon all the taxable real property within the Township for the payment of the principal of and interest on such bonds and notes, without limitation as to rate or amount.

Section 14. This ordinance shall take effect twenty days after the first publication thereof after final passage.

Ordinance 2630-23

Mayor Miggins brought forth Ordinance 2630-23 for introduction. Mr. McDonald reviewed the ordinance and the renewal of the franchise agreement with Comcast. Mayor Miggins moved the ordinance to be taken up and passed on first reading noting that the public hearing would take place on March 21, 2023, Mr. Cohen seconded the motion. Mayor Miggins requested a roll call vote.

Roll Call Vote: All Ayes

ORDINANCE NO. 2630-23
AN ORDINANCE GRANTING RENEWAL OF MUNICIPAL CONSENT TO
COMCAST OF NEW JERSEY II, LLC. TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE
TELEVISION AND COMMUNICATIONS SYSTEM IN THE TOWNSHIP OF MILLBURN, ESSEX COUNTY, NEW
JERSEY

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWNSHIP OF MILLBURN, ESSEX COUNTY, NEW JERSEY, AS FOLLOWS:

SECTION 1. PURPOSE OF THE ORDINANCE.

The Township hereby grants to Comcast renewal of its non-exclusive Municipal Consent to place in, upon, across, above, over and under highways, streets alleys, sidewalks, easements, public ways and public places in the Township, poles, wires, cables, underground conduits, manholes and other television conductors, fixtures, apparatus, and equipment as may be necessary for the construction, operation, and maintenance in the Township of a cable television and communications system.

SECTION 2. DEFINITIONS.

For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. Such meaning or definition of terms in supplemental to those definitions of the Federal Communications Commission (“FCC”) rules and regulations, 47 C.F.R. Subsection 76.1 et seq., and the Cable Communications Policy Act, 47 U.S.C. Section 521 et seq., as amended, and the Cable Television Act, N.J.S.A. § 48:5A-1 et seq., and shall in no way be construed to broaden, alter, or conflict with the federal and state definitions:

- a. “Township” is the Township of Millburn, County of Essex, State of New Jersey.
- b. “Company” or “Comcast” is the grantee of rights under this Ordinance and is known as Comcast of New Jersey II, LLC.
- c. “Act” or “Cable Television Act” is Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. § 48:5A-1, et seq.
- d. “FCC” is the Federal Communications Commission.
- e. “Board” or “BPU” is the Board of Public Utilities, State of New Jersey.
- f. “Office” or “OCTV” is the Office of Cable Television of the Board.
- g. “Basic Cable Service” means any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.
- h. “Application” is the Company’s Application for Renewal of Municipal Consent.
- i. “Primary Service Area” or “PSA” consists of the area of the Township currently served with existing plant as set forth in the map annexed to the Company’s Application for Municipal Consent.

SECTION 3. STATEMENT OF FINDINGS.

Public hearings conducted by the Township, concerning the renewal of Municipal Consent herein granted to the Company were held after proper public notice pursuant to the terms and conditions of the Act and the regulations of the Board adopted pursuant thereto. Said hearings, having been fully open to the public, and the Township, having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of Municipal Consent, the Township hereby finds that the Company possesses the necessary legal, technical, character, financial and other qualifications and that the Company’s operating and construction arrangements are adequate and feasible.

SECTION 4. DURATION OF FRANCHISE.

The non-exclusive Municipal Consent granted herein shall expire 10 years from the date of expiration of

the previous Certificate of Approval issued by the Board.

In the event that the Township shall find that the Company has not substantially complied with the material terms and conditions of this Ordinance, the Township shall have the right to petition the OCTV, pursuant to N.J.S.A. § 48:5A-47, for appropriate action, including modification AND/OR termination of the Certificate of Approval; provided, however, that the Township shall first have given the Company written notice of all alleged instances of non-compliance and an opportunity to cure same within ninety (90) days of that notification.

SECTION 5. FRANCHISE FEE.

Pursuant to the terms and conditions of the Act, the Company shall, during each year of operation under the consent granted herein, pay to the Township two percent (2%) of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for cable television reception service in the Township or any higher amount permitted by the Act or otherwise allowable by law, whichever is greater. The current franchise fee amount for the Township is 3.5% of the gross revenues pursuant to N.J.S.A. 48:5A-30(d)

SECTION 6. FRANCHISE TERRITORY.

The consent granted under this Ordinance for the renewal of the franchise shall apply to the entirety of the Township and any property subsequently annexed hereto.

SECTION 7. EXTENSION OF SERVICE.

The Company shall be required to proffer service to any residence along any public right-of-way in the Primary Service Area, as set forth in the Company's Application. Any extension of plant beyond the Primary Service Area shall be governed by the Company's Line Extension Policy, as set forth in the Company's Application, with a HPM ("homes-per-mile") of 35 dwellings per linear mile from the nearest active trunk or feeder line.

SECTION 8. CONSTRUCTION REQUIREMENTS.

- a. Restoration: In the event that the Company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, or other surface in the natural topography, the Company shall, at its sole expense, restore and replace such places or things so disturbed in as good a condition as existed prior to the commencement of said work.
- b. Relocation: If at any time during the period of this consent, the Township shall alter or change the grade of any street, alley or other way or place the Company, upon reasonable notice by the Township, shall remove, re-lay, or relocate its equipment, at the expense of the Company prior to approval of the board.
- c. Removal or Trimming of Trees: During the exercise of its rights and privileges under this franchise, the Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, or other public places of the Township so as to prevent the branches of such trees from coming in contact with the wires and cable of the Company. Such trimming shall be only to the extent necessary to maintain proper clearance of the Company's wire and cables.
- d. Temporary removal of cables: The Company shall, upon request of the Township, at the company's expense, temporarily raise, lower, or remove its lines in order to facilitate the moving of buildings or machinery or in other like circumstances, subject to the prior approval of the board.
- e. Installation of equipment: The Company shall install equipment in the same location and

manner as existing public utilities whenever possible, in order to minimize the impact of same on surrounding property.

SECTION 9. CUSTOMER SERVICE.

In providing services to its customers, the Company shall comply with N.J.A.C. § 14:18-1, et seq. and all applicable state and federal statutes and regulations. The Company shall strive to meet or exceed all voluntary company and industry standards in the delivery of customer service.

a. The Company shall continue to comply fully with all applicable state and federal statutes and regulations regarding credit for outages, the reporting of same to regulatory agencies and notification of same to customers.

b. The Company shall continue to fully comply with all applicable state and federal statutes and regulations regarding the availability of devices for the hearing impaired and the notification of same to customers.

c. The Company shall use every reasonable effort to meet or exceed voluntary standards for telephone accessibility developed by the National Cable Television Association (“NCTA”).

d. Nothing herein shall impair the right of any subscriber or the Township to express any comment with respect to telephone accessibility to the Complaint Officer or impair the right of the Complaint Officer to take any action that is permitted under law.

SECTION 10. MUNICIPAL COMPLAINT OFFICER.

The Office of Cable Television is hereby designated as the Complaint Officer for the Township pursuant to N.J.S.A. § 48:5A-26(b). All complaints shall be received and processed in accordance with N.J.A.C. § 14:17-6.5. The Township shall have the right to request copies of records and reports pertaining to complaints by Township customers from the OCTV.

SECTION 11. LOCAL OFFICE.

During the term of this franchise, and any renewal thereof, the Company shall maintain a business office or agent in accordance with N.J.A.C. § 14:18-5.1 for the purpose of receiving, investigating, and resolving all local complaints regarding the quality of service, equipment malfunctions, and similar matters

SECTION 12. PERFORMANCE BOND.

During the life of the franchise the Company shall give to the Township a bond in the amount of Twenty-Five Thousand Dollars (\$25,000). Such bond shall be to insure the faithful performance of all undertakings of the Company as represented in its application for municipal consent incorporated herein.

SECTION 13. SUBSCRIBER RATES.

The rates of the Company shall be subject to regulation as permitted by federal and state law.

SECTION 14. COMMITMENTS BY THE COMPANY.

a. The Company shall continue to provide Basic cable television service at no cost to one (1) to outlet at no cost to each qualified existing school and library in the Township, public and private, elementary, intermediate, and secondary, provided the school building is within two hundred (200) feet of active cable distribution plant or through customer owned conduit. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the school or library requesting service.

b. The Company shall continue to provide Basic cable television service at no cost to one (1) to outlet at no cost to each qualified existing and future municipal building, police, fire, emergency management facility and public library in the Township, provided the facility is located within two hundred (200) feet of active cable distribution plant or through customer owned conduit. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the Township.

c. Within six months of the issuance of a Renewal Certificate of Approval by the BPU, the Company shall provide to the Township a one-time Access Capital Grant in the amount of \$30,000 to meet the Access capital needs of the community.

d. The Communications Act of 1934, as amended [47 U.S.C. § 543 (b)], allows the Company to itemize and/or identify: (1.) the amount on the subscriber bill assessed as a franchise fee and the identity of the governmental authority to which the fee is paid; (2.) the amount on the bill assessed to satisfy any requirements imposed on the Company by the cable franchise to support public, education, and/or governmental access channels or the use of such channels; and (3.) any grants or other fees on the bill or any tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. The Company reserves its external cost, pass-through rights to the full extent permitted by law.

SECTION 15. GOVERNMENTAL ACCESS

a. The Company shall continue to make available one (1) dedicated municipal access channels for use by the Township.

b. The Company does not relinquish its ownership of or ultimate right of control over the channels by designating it for municipal access use. An access user acquires no property or other interest by virtue of the use of a channel so designated and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use.

c. The Company will maintain the cable, modulators, and equipment necessary for the signal to be sent to the Company, and to receive the return feed of the signal.

d. The Company shall not exercise editorial control over any governmental use of channel by the Township, except Company may refuse to transmit any access program or portion of any educational or governmental access program that contains obscenity, indecency, or nudity.

e. Company Use of Fallow Time. Because blank or underutilized channel are not in the public interest, in the event the Township or other qualified access users elect not to fully program their access channel, Company may program unused time on those channels subject to reclamation by the Township upon no less than 60 days written notice.

f. Indemnification. The Township shall indemnify Company for any liability, loss, or damage it may suffer due to violation of the intellectual property rights of third parties on the channel and from claims arising out of the rules for or administration of access channel and its programming.

g. The Communications Act of 1934, as amended [47 U.S.C. § 543 (b)], allows the Company to itemize and/or identify: (1.) the amount on the subscriber bill assessed as a franchise fee and the identity of the governmental authority to which the fee is paid; (2.) the amount on the bill assessed to satisfy any requirements imposed on the Company by the cable franchise to support public, education, and/or governmental access channels or the use of such channels; and (3.) any grants or other fees on the bill or any tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. The Company reserves its external cost, pass-through rights to the full extent permitted by law.

SECTION 16. EMERGENCY USES.

- a. The Company will comply with the Emergency Alert System (“EAS”) rules in accordance with applicable state and federal statutes and regulations.
- b. The Company shall in no way be held liable for any injury suffered by the Township or any other person, during an emergency, if for any reason the Township is unable to make full use of the cable television system as contemplated herein.

SECTION 17. LIABILITY INSURANCE.

The Company shall at all times maintain a comprehensive general liability insurance policy with a single limit amount of One Million Dollars (\$1,000,000) covering liability for any death, personal injury, property damages or other liability arising out of its construction and operation of the cable television system, and an excess liability (or “umbrella”) policy in the amount of Five Million Dollars (\$5,000,000).

SECTION 18. INCORPORATION OF THE APPLICATION.

All of the statements and commitments contained in the Application or annexed thereto and incorporated therein, and any amendment thereto, except as modified herein, are binding upon the Company as terms and conditions of this consent. The Application and other relevant writings submitted by the Company shall be annexed hereto and made a part hereof by reference provided same do not conflict with application State or Federal law.

SECTION 19. COMPETITIVE EQUITY.

Should the Township grant municipal consent for a franchise to construct, operate and maintain a cable television system to any other person, corporation, or entity on terms materially less burdensome or more favorable than the terms contained herein, the Company may substitute such language that is more favorable or less burdensome for the comparable provision of this Ordinance subject to the provisions of

N.J.A.C. § 14:17-6.7.

SECTION 20. SEPARABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and its validity or unconstitutionality shall not affect the validity of the remaining portions of the Ordinance.

SECTION 21. THIRD PARTY BENEFICIARIES.

Nothing in this Franchise or in any prior agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such agreements or Franchise.

SECTION 22. EFFECTIVE DATE.

This Ordinance shall take effect immediately upon issuance of a Renewal Certificate of Approval from the BPU.

New Business

Rules of Procedure and Order of Business

Mayor Miggins presented and asked if there were any questions on the proposed Rules of Procedure and Order of Business language. Seeing none, Mayor Miggins asked for a consensus, all were in favor to have this before the Committee for formal approval. Mayor Miggins asked Ms. Gatti to place the resolution on the next agenda.

Proposed Recreation Fee Ordinance

Mr. McDonald advised that the Recreation Committee reviewed its fees as it did every three years or so and a revised ordinance would be presented to the Township Committee in the near future reflecting proposed changes to the fees. Mayor Miggins asked for a consensus to move forward with this and all are in favor.

The Township Committee entered into closed session at 8:45 PM.

The Township Committee returned from closed session at 9:45PM.

Adjournment

Mayor Miggins asked for a motion to adjourn the meeting. Ms. Prupis made a motion to adjourn; the motion was seconded by Mr. Cohen to adjourn the meeting at 9:46 PM. Vote: All Ayes.

Christine A. Gatti, RMC
Municipal Clerk

Approved: March 21, 2023