

**Approved Minutes
Open Session
Of the Mayor and Council of the Borough of Princeton
June 10, 2008
Regular Meeting
Closed Session 6:30 P.M.
Open Session 7:30 P.M.**

Present: Council President Margaret Karcher, Councilman David Goldfarb, Councilman Andrew Koontz, Councilman Roger Martindell, Councilwoman Barbara Trelstad, Councilman Kevin Wilkes, and Mayor Mildred Trotman

Absent: None

Staff Present: Borough Administrator Robert W. Bruschi, Borough Attorney Karen L. Cayci, Borough Engineer Christopher M. Budzinski, Borough Police Chief Anthony V. Federico, Borough Clerk Andrea Lea Quinty

Mayor Trotman called the meeting to order at 6:30 P.M. and read the open public meetings statement as follows:

"This meeting is called to order pursuant to the provisions of the Open Public Meetings Law. This meeting of June 10, 2008, was included in a list of meetings sent to and advertised in the Princeton Packet and Trenton Times, posted on the bulletin board in the Borough of Princeton municipal building and has remained continuously posted as the required notices under the statute. In addition a copy of this notice is and has been available to the public and is on file in the Office of the Borough Clerk. Proper notice having been given, the Borough Clerk is directed to include this statement in the minutes of this meeting."

Mayor Trotman read **Agenda Item C, Resolution 2008-R163**, as follows:

**RESOLUTION 2008-R163
OF THE MAYOR AND COUNCIL OF THE BOROUGH OF PRINCETON
INTO CLOSED SESSION ON JUNE 10, 2008**

WHEREAS, the Open Public Meetings Act, P.L. 1975, Chapter 231 permits the exclusion of the public forum from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances may presently exist; and

WHEREAS, the Governing Body wishes to discuss the following issues:

1. Negotiations — NHKT

WHEREAS, minutes will be kept and once the matter involving confidentiality of the above no longer requires that confidentiality, then minutes can be made public; and

NOW THEREFORE BE IT RESOLVED that the public be excluded from this meeting.

Councilwoman Trelstad moved to approve, and Council President Karcher seconded. Council members Karcher, Goldfarb, Koontz, Martindell, Trelstad, and Wilkes voted in the affirmative. Hearing no nay votes, Mayor Trotman proclaimed the resolution approved.

Borough Council recessed into closed session.

At 7:30 P.M. Council reconvened into open session.

Mayor Trotman asked all present to rise for **Agenda Item D, Salute to the Flag.**

Mayor Trotman read **Agenda Item E, Summary — Closed Session Discussion — Robert W. Bruschi, Borough Administrator**

Mr. Bruschi reported that Council discussed final review of estoppel agreements and personal guarantees in relation to NHKT for development of Phase II (Bldg. C)

Mayor Trotman read **Agenda Item F, Public Presentation**, and asked if anyone present wished to address the Council with an issue not on the agenda.

There were no public presentations.

Mayor Trotman read **Agenda Item G, Correspondence (1) — Sidewalk Placement — Kristina Johnson, 75 Cleveland Lane**

Christopher Budzinski, Borough Engineer, updated Council on efforts to resolve the issue of a sidewalk at 75 Cleveland Lane in relation to road and sidewalk improvements on Cleveland Lane. *Mr. Budzinski emphasized that all improvements being discussed are in the public right of way; none is on private property.*

Mrs. Johnson's engineer had presented two concepts for changing the present design for sidewalk location: (1) introduce a second mid-block crosswalk on Cleveland at a neckdown between Lafayette Road and Elm Road and (2) extend sidewalk on the southern side of Cleveland to Lafayette. (The current design shows a continuous sidewalk on the north side of Cleveland between Lafayette and Elm.)

Mr. Budzinski expressed concern about public pedestrian safety with the proposed revisions. He feared pedestrians would ignore the double crossing and connect the two sidewalk segments by walking in the street or along the grass behind the curb. Mr. Budzinski pointed out that the south side of Cleveland has impediments to sidewalk construction such as trees, moderate grades, and utility poles. The Borough had compromised with Mrs. Johnson by reducing the width of the road entirely on the south side (curb pulled two feet from her property) and by agreeing to abut the sidewalk against the curb (as far as possible from the dwelling). Mr. Budzinski noted that all neighbors now expect the agreed-upon, approved sidewalk layout; in fact, neighborhood objections to any different plan are already being heard. Mr. Budzinski stated that keeping the initial design is the prudent action and urged Council to do so.

Dino Spadaccini, attorney for Mrs. Johnson, reviewed discrepancies among professionals regarding cost to revise the project, safety concerns and delay issues. He said that Mrs. Johnson's proposal will have no impact on the general public and will alleviate detriment to a unique home and homeowner. If there is nominal cost, the Borough can afford it because of a reserve in the project's budget.

Mr. Spadaccini introduced Carl Penke of engineering firm CMX whose area of expertise is traffic. Karen Cayci, Borough Attorney, asked Mr. Penke to affirm that his testimony will be true and accurate; he did so.

Mr. Spadaccini presented drawings showing Mrs. Johnson's proposed changes. He cited proper signage, proper striping, and adequate sightlines as requirements for pedestrian safety; all are present in Mrs. Johnson's plan. Mr. Penke stated that the design option can be implemented easily. Mr. Spadaccini stated The New Jersey Department of Transportation reviewed and did not object to the plan.

Borough Administrator Robert Bruschi asked about street side parking. Mr. Penke responded that, at worst, one parking spot might be lost.

Mr. Spadaccini read, item by item, from Mr. Budzinski's memo of June 10, 2008, and Mr. Penke commented supporting Mrs. Johnson's request. There was some discussion of exactly what Mrs. Johnson's complaint was: Sidewalk too close to the windows or no sidewalk at all.

Mr. Spadaccini insisted that Mrs. Johnson's team had tackled all of Council's issues from May 6, 2008; they addressed safety concern, time frame concern, uniqueness of the situation, and discussion regarding additional expense (nominal at best).

Councilman Wilkes noted the inherent danger to pedestrians in a crosswalk two feet from a driveway—drivers backing out do not expect to see people in the middle of the road.

Mr. Penke stated that timing can be controlled—a day or two for change of plan. Any change incurs cost for "inconvenience," which Mr. Penke estimated at \$5,000 – \$10,000.

Councilwoman Trelstad, a frequent walker in the area, focused on the speed at which vehicles approach and enter the intersection of Lafayette and Cleveland. She noted that the proposed mid-block crosswalk is just where cars speed up to make the light at Elm.

Councilman Koontz presented the perspective of a cyclist. Road width and visibility are primary safety issues for both proposed plans.

Council President Karcher stated that the safest approach is to put the sidewalk where people expect it to be; invite pedestrians to cross at the *corner* where they would normally cross.

Mrs. Johnson thanked Council for patience. She emotionally reiterated her sense of personal violation and violation to her trees and bushes.

Mayor Trotman opened discussion to members of the audience.

Maureen Smith, 70 Cleveland Lane, cited Donald Smith's email detailing their reasons for opposition to a sidewalk on their frontage. She stated personal knowledge (living right there) that the intersection is a dangerous one.

Russ White, Lafayette Road, speaking as a citizen and taxpayer, disapproved of the proposed change. He noted heavy evening traffic on Lafayette to Cleveland toward Rosedale/Great Road; the reverse is true in the morning rush hour. Drivers will be surprised to see pedestrians in the roadway between Lafayette and the Great Road, whereas they *expect* crosswalks at intersections and stop signs. Mr. White, a recent juror listening to experts testify for both sides, stated disbelief in an expert opinion that the revised plan is as safe as Borough's plan. He questioned how a multiple traverse of Cleveland to pursue sidewalks can be *safer* for walkers.

Reed Gusciora, Maclean Street, supported Mrs. Johnson in that the Borough's plan is inherently bad and unsafe with sidewalk on only one side. He thought it was unfortunate that the Borough did not consider the value, historic nature, and privacy of the property at 75 Cleveland.

Mayor Trotman acknowledged that Mrs. Johnson's team had responded to Council as requested and insisted that Council recognized the distinctiveness of the property.

Councilman Goldfarb noted the importance of a good sidewalk network throughout town, especially for people traveling on foot from any point A to point B.

Council President Karcher observed that *all* mid-block crosswalks are hazardous for their lack of visibility by drivers.

Councilwoman Trelstad, a frequent walker around the west side, did not support the change incorporating pedestrians' crossing back and forth in search of sidewalks.

Councilman Martindell did not feel safety or cost issues outweighed the uniqueness of the property. He supported accommodating Mrs. Johnson.

Councilman Koontz expressed sympathy for Mrs. Johnson. He suggested the best solution is to have sidewalks on both sides of the street. Councilwoman Trelstad agreed.

Councilman Wilkes was unwilling to grant that the new design is as safe as Borough's proposed design, in particular the danger of a crosswalk two feet from a private driveway. Councilman Wilkes supported sidewalks near houses as egalitarian, the lifeblood of democracy on Cleveland Lane as much as Maclean Street.

Councilman Wilkes addressed Mrs. Johnson's distress at the impending destruction of the two Japanese hollies at the edge of her driveway. Councilman Wilkes researched and learned from Kale's Nursery that they could be pruned from behind and saved.

In addition to each members comments above, the Borough agreed to continue to work with Mrs. Johnson as to the installation of the sidewalk, additional landscaping and treatment of the bushes near her driveway.

Mayor Trotman read **Agenda Item H, Report (1) — Monthly Police Report — Anthony V. Federico, Chief of Police**

**RESOLUTION 2008-R164
OF THE MAYOR AND COUNCIL OF THE BOROUGH OF PRINCETON
APPROVING THE MONTHLY CHIEF OF POLICE REPORT**

WHEREAS, Anthony V. Federico, Chief of Police of the Borough of Princeton prepared a comprehensive report detailing the police activity for the month of April 2008; and

WHEREAS, the Mayor and Council reviewed said report at their Regular Meeting attended by Chief of Police Federico and made various inquiries of Chief Federico.

NOW THEREFORE BE IT RESOLVED that the Mayor and Council hereby accept the April 2008 Monthly police report prepared by the Chief of Police.

Chief Federico reported that patrol officer Travis Allie had a personal accident incurring a severe head injury and may be on leave for some time. Chief Federico also reported that three suspended officers are still suspended with pay pending status notification from the prosecutor's office.

Councilman Koontz asked if police have a plan to reduce gasoline use. Chief Federico observed that outfitting and training for motorcycle patrols represent a monumental task and cost, outweighing, in his opinion, the cost of gasoline. Chief Federico mentioned the "Catch-22" that computer systems in police vehicles rely on the motors; engines cannot be turned off when patrolling.

Chief Federico said the joint truck initiative with Princeton Township and Lawrence Township is successful: Borough relies on adjacent communities for summonses since Borough streets are not conducive to pulling trucks over.

Councilwoman Trelstad moved to approve the police report, and Councilman Wilkes seconded. Council approved unanimously.

Mayor Trotman read **Agenda Item I, New Business (1) — Resolution 2008-R165** as follows:

**RESOLUTION 2008-R165
OF THE MAYOR AND COUNCIL OF THE BOROUGH OF PRINCETON
AUTHORIZING EXECUTION OF ESTOPPELS AND ACCEPTANCE OF GUARANTY
IN CONNECTION WITH THE GROUND LEASE FOR BUILDING C
BEING PART OF THE BOROUGH PARK/PLAZA REDEVELOPMENT AREA**

WHEREAS, by Resolution 2003-R54, the Mayor and Council approved execution of the Redevelopment Agreement between the Borough of Princeton and Nassau HKT Urban Renewal Associates, LLC ("NHKT") for the Park/Plaza Redevelopment Area in the Borough of Princeton which included certain lands described in the Redevelopment Agreement as the "Building C" area; and which authorized a Ground Lease for the "Building C" area; and

WHEREAS a ground lease was executed by and between the Borough and NHKT in September 2004 for the Building C area (“ the Building C Ground Lease”); and

WHEREAS, pursuant to the Building C Ground Lease, the Borough agreed to provide estoppel certificates if requested by NHKT in order to facilitate the construction financing of Building C; and

WHEREAS, NHKT has advised the Borough that various estoppel certificates will be necessary in order for it to obtain construction financing for the construction of Building C; and

WHEREAS, pursuant to the Redevelopment Agreement, NHKT is obligated to provide a guarantee to insure timely completion of Building C;

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the Borough of Princeton as follows:

The Mayor and Clerk are authorized to execute the attached Ground Lessor Agreement and Estoppel Certificate, Estoppel Certificate under Financial Agreement, Estoppel Certificate under Redevelopment Agreement and Guaranty Agreement and deliver same to NHKT at the closing of institutional construction financing for Building C upon satisfaction by NHKT of the following conditions:

(1.) Submission to the Borough of a loan commitment for the construction financing of Building C and proof of acceptance by same of NHKT from a lender that meets the requirements set forth in Paragraph 4.1.2 of the Redevelopment Agreement, to be provided to the Borough within 60 days of the date of this Resolution; and

(2.) Verification by the NHKT’s institutional lender in said loan commitment of NHKT’s equity in the Building C project of not less than \$4,000,000 (Four million dollars); and

(3.) Securing of the Building C site by NHKT no later than 45 days from the date of this Resolution; and

(4.) Delivery of final loan documents to the Borough with inclusion of NHKT completion guarantees to lender.

BE IT FURTHER RESOLVED, that the foregoing conditions shall be satisfied within the time periods set forth above and that failure by NHKT to so comply within the time periods set forth herein shall render the attached estoppels void; and

BE IT FURTHER RESOLVED that the Mayor and Council accept the guaranty attached hereto in satisfaction of Article 6.8 of the Redevelopment Agreement.

Councilman Goldfarb moved to approve Resolution 2008-R165, and Councilman Koontz seconded.

Mr. Bruschi reviewed the debate to date. Items remaining are estoppels and performance guarantees. Council is asked to authorize Mayor and Clerk to sign the agreements.

At Councilman Koontz’s request, Ms. Cayci defined estoppel as certification from one party to another as to facts and explained protections provided with these estoppels.

Councilman Martindell expressed concern that Building C (also called Phase II) is years behind schedule already. Councilman Goldfarb noted that the property is to be secured within 45 days

after lease commencement date and rent is due one year after lease commencement date. Councilman Koontz observed that NHKT's building permits from DCA will expire if construction does not occur. Mr. Bruschi stated that NHKT must secure financing within 60 days or estoppels terminate.

Councilman Martindell commented that securing the lot equals loss to Borough taxpayers of \$200,000 per year in parking revenues beginning at the 45th day. Councilman Goldfarb pointed out that loss of revenue from Tulane lot was anticipated from the beginning; nothing new here.

Councilman Martindell recommended Council approve the estoppels as to form but not for execution so that Council may see the terms of the lending agreements. He suggested including milestones that define default so the lender will impose like milestones on NHKT.

Councilman Koontz stated that Tulane lot parkers will not disappear; they will go to Spring Street garage. In other words, thinking that Tulane lot revenue is lost and never recoverable is illogical.

Councilman Martindell mentioned 13 disputes (Exhibit B) between Borough and developer (valued at over \$1 million and representing fundamental differences) that remain open for mediation or litigation during proposed Phase II and question the parties' ability to work together.

Councilman Goldfarb encouraged Council to entertain talks with NHKT with open minds and good intentions.

Ms. Cayci noted the presence of NHKT representatives in the audience and suggested Council ask them directly about their plans for Phase II.

Council President Karcher stated that the 13 issues must be resolved (period). She opined that selecting another developer would mean starting over with a new set of problems. She recommended proceeding with the developer that was *carefully chosen* at the outset.

Councilman Koontz said that Council must move forward on the redevelopment agreement in *good faith*. "Characterizing" the outstanding issues is not good faith on Council's part in the mediation effort.

Councilwoman Trelstad agreed with Councilman Koontz's observations.

Councilman Martindell emphasized that Borough is not "stuck" with authorizing estoppels for Phase II. (Necessary mediation is for Phase I disputes.) Council can simply *take no action*.

Councilman Goldfarb countered that Councilman Martindell's approach will result in a more adversarial relationship without resolution of the outstanding items.

Councilman Koontz noted that further delay entails further cost to all sides. He reminded Council that Phase I and Phase II are components of *one* redevelopment agreement signed by both Borough and NHKT.

Mayor Trotman invited Nassau HKT to the microphone. Gary Green, attorney, commended Councilman Koontz's and Councilman Goldfarb's summation of the situation. He stressed the positives of the project and normal construction chain of events leading to the status today.

Councilwoman Trelstad asked Mr. Green about the time frame for obtaining funds and completing Phase II. Mr. Green listed the need to:

- erect a construction fence
- obtain an archeological dig
- relocate wires
- select a lender
- close the loan

in order to move on in about 60 days. A lender typically sets a completion deadline of 12 to 18 months.

Councilman Martindell read some items from Schedule B, noting their dollar values.

Mayor Trotman opened discussion to the public.

Councilwoman Trelstad stepped out at 10:25 P.M. and returned shortly.

Mark Censits, Borough resident and business owner, supported development of the Tulane area, currently the "back alley" of downtown. He discouraged anticipating potential failure points and seeking legal responses in advance. He recommended identifying an alignment of interests and choosing partners carefully.

Mr. Mark Alexandridis, 45 Princeton Avenue, stated that hermetic documentation at the outset is worth the effort; otherwise taxpayers are at risk. He commented that Borough did not manage Phase I very well on such things as deadlines and milestones.

Mr. Alexandridis raised a number of questions about the estoppels and Ms. Cayci clarified points for him. Mr. Alexandridis suggested deleting estimated dollar amounts as not amplifying and possibly limiting; Council members agreed that items are sufficiently identified by description without an estimated cost attached.

Mr. Alexandridis asked how many items on Schedule B were posed by the Borough for improvement of its position. Mr. Bruschi replied that Schedule B is primarily a *joint* effort to conclude Phase I; most matters will be closed without third-party intervention (mediation/litigation).

Mr. Alexandridis stated that acting on Building C and going forth with mediation on Phase I simultaneously does not make good business sense. He recommended Council agree to mediation, evolve from it, and then move forward.

Marvin Reed, former Borough mayor, noted that it took 18 years for the Palmer Square group to begin their project—18 years of lost tax revenue—and encouraged Council to gain income (be it ground rent, parking fees) as soon as possible.

Hearing no further discussion, Mayor Trotman returned to Council and staff. Ms. Cayci reviewed some “wordsmithing” to Resolution 2008-165. Mayor Trotman called for a vote.

Councilman Martindell moved to amend the resolution to accept the form of estoppels but not authorize acceptance. Councilman Goldfarb seconded.

Jack Morrison, NHKT principal, stated that his group lost \$140,000 when the lender for Building A abandoned the venture without an estoppel agreement in place. Not having an estoppel now for Building C will only result in delay—with no benefit to either party. He said the estoppels will specify precisely what NHKT must produce in order to pursue lending.

Councilman Martindell stated that waiting would inform Council clearly of the schedule for closing Tulane lot and other consequences of construction (such as reporting requirements). Mr. Green pointed out that it is in NHKT’s best interests to move forward speedily in order to begin their own profit period.

Mayor Trotman reminded Council of a motion on the floor to amend Resolution 2008-165 and called for a vote. Councilman Martindell voted aye; Council members Karcher, Goldfarb, Koontz, Trelstad, and Wilkes voted nay. Mayor Trotman proclaimed that the motion failed.

Mayor Trotman returned to the original motion to approve the resolution as reworded by Ms. Cayci. Mayor Trotman proclaimed that the motion carried five to one, with Councilman Martindell voting nay.

Mayor Trotman read **Agenda Item I, New Business (2 – 4) — Resolutions 2008-R166, 2008-R167, and 2008-R168** as follows:

**RESOLUTION 2007-R166
OF THE MAYOR AND COUNCIL OF THE BOROUGH OF PRINCETON
APPROVING FIRE DEPARTMENT APPLICATION FOR
NATHAN R. PLOUGH**

WHEREAS, Nathan R. Plough has met all requirements of Borough of Princeton Code of Laws, Chapter 14, Section 25(a) through 25(f) as a member of the HOOK AND LADDER and

WHEREAS, the membership application has been reviewed by the municipal officers; and

NOW THEREFORE BE IT RESOLVED that the Mayor and Council of the Borough of Princeton hereby approve the application for membership to the Office of the Borough Administrator, the Fire Chief and Fire Company.

RESOLUTION 2007-R167

**OF THE MAYOR AND COUNCIL OF THE BOROUGH OF PRINCETON
APPROVING FIRE DEPARTMENT APPLICATION FOR
ANDREW GOTTELFINGER**

WHEREAS, Andrew Gottelfinger has met all requirements of Borough of Princeton Code of Laws, Chapter 14, Section 25(a) through 25(f) as a member of the MERCER ENGINE COMPANY #3 and

WHEREAS, the membership application has been reviewed by the municipal officers; and

NOW THEREFORE BE IT RESOLVED that the Mayor and Council of the Borough of Princeton hereby approve the application for membership to the Office of the Borough Administrator, the Fire Chief and Fire Company.

**RESOLUTION 2008-R168
OF THE MAYOR AND COUNCIL OF THE BOROUGH OF PRINCETON
APPROVING RAFFLE LICENSE RA:323
TO THE ST PAUL SCHOOL PTA**

WHEREAS, the ST PAUL SCHOOL PTA submitted a raffle application to the Borough Clerk;
and

WHEREAS, N.J.A.C. 13:47-4.1 requires seven (7) days to elapse before the Governing Body makes its findings and determinations; and

WHEREAS, the required waiting period is satisfied on June 10, 2008; and

WHEREAS, ST PAULS PTA, in accordance with N.J.A.C. 13:47-3 et seq, has submitted the required fees, four copies of their application, and the Legalized Games of Chance Control Commission (LGCCC) registration form with identification number.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Princeton that raffle license RA: 323 for ST PAULS PTA be approved; and

BE IT FURTHER RESOLVED that the Municipal Clerk will forward the Finding and Determinations for RA: 323 to the LGCCC in accordance with N.J.A.C. 13:47-4.1.

Councilman Koontz moved to approve Resolutions 2008-R166, 2008-R167, and 2008-R168; Councilwoman Trelstad seconded; and Borough Council approved unanimously.

Mayor Trotman read **Agenda Item J, Bill List for June 10, 2008 — Resolution 2008-R169** as follows:

**RESOLUTION 2008-R169
OF THE MAYOR AND COUNCIL OF THE BOROUGH OF PRINCETON
APPROVING THE JUNE 10, 2008 BILL LIST**

WHEREAS, Sandra L. Webb has forwarded the bills received for payment by the Borough of Princeton for review and approval by the Mayor and Council; and

WHEREAS, the Borough Clerk has certified that the vouchers listed on the attached register are as follows:

CURRENT ACCOUNT (8-01)	1,718,926.37
RESERVE ACCOUNT (7-01)	7,664.88
PARKING UTILITY OPERATING FUND (8-05)	15,505.36
PARKING UTILITY OPERATING FUND (7-05)	34.83
AFFORDABLE HOUSING OPERATING ACCT (8-24)	
IMPROVEMENT ASSESSMENT (8-11)	
AFFORDABLE HOUSING OPERATING ACCT (7-24)	
CAPITAL ACCOUNT (C-04)	192,300.49
PARKING UTILITY CAPITAL FUND (P-06)	12,339.95
ESCROW (E-30)	
TRUST FUND (T-13)	
GENERAL INSURANCE	
FLEXIBLE SPENDING FUND (5-22)	

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MANUAL	827,000.00
ASSESSMENT TRUST FUND (5-11)	
GRANT (G-02)	9,659.99

NOW THEREFORE BE IT RESOLVED that the Mayor and Council of the Borough of Princeton approve the bill list of June 10, 2008 as presented.

Councilwoman Trelstad moved to approve Resolution 2008-R169, Councilman Koontz seconded, and Council approved unanimously.

Councilman Koontz moved to adjourn; Councilwoman Trelstad seconded. There being no further business, Mayor Trotman adjourned the open session meeting at 11:12 P.M.

Respectfully submitted,

Andrea Lea Quinty
Borough Clerk