

**READINGTON TOWNSHIP COMMITTEE  
MEETING – October 6, 2008**

Mayor Auriemma *calls the meeting to order at 6:30 p.m.* announcing that all laws governing the Open Public Meetings Act have been met and that this meeting has been duly advertised.

**PRESENT:** Mayor T. Auriemma, Deputy Mayor J. Allen, Mr. F. Gatti, Mrs. B. Muir, Mr. G. Shamey

**ALSO PRESENT:** Administrator Mekovetz, Attorney S. Dragan, Engineer McEldowney

**ABSENT:** None

**EXECUTIVE SESSION:**

Clerk read the following Resolution:

**RESOLUTION**  
**EXECUTIVE SESSION**

**WHEREAS**, N.J.S.A. 10:4-6 *et seq.*, the Open Public Meetings Act, permits the exclusion of the public from a meeting in certain circumstances; and

**WHEREAS**, the Township Committee is of the opinion that such circumstances presently exist and desires to authorize the exclusion of the public from the portion of the meeting in accordance with the act;

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Readington, County of Hunterdon, State of New Jersey as follows:

1. The public shall be excluded from discussion of and action upon the specified subject matter as set forth in the following Exhibit "A."

**EXHIBIT A**

<b><u>Subject Matter</u></b>	<b><u>Basis Of Public Exclusion</u></b>	<b><u>Date Anticipate When Disclosed to Public</u></b>
Land Acq/Contract Negotiations.....	Block 27, Lot 5 (Mountain Rd)..... (Cavaino)	Certain information at the discretion of the Township Committee tonight...other information will remain confidential
Contract Negotiations.....	Arc of Hunterdon.....	“ “ “
Litigation.....	COAH Appeal/Pietrazsweski.....	“ “ “
Land Acq/Contract Negotiations...	Block 75, Lot 33 (HannaSaqa)....	“ “ “
Contract Negotiations.....	Agreement for Vehicle Fueling..... Three Bridges Volunteer Fire Co.	“ “ “
Construction Office.....	Personnel Matters.....	“ “ “
Emergency Management.....	Personnel Matters.....	“ “ “
Attorney-Client Privilege.....	Executive Session Minutes (September 15, 2008)	“
Litigation.....	Block 48, Lot 23; Block 55, Lot 33; “ Block 56, Lots 1, 3, 6 & 8; Block 39, Lot 24 and Block 67, Lot 2 (Solberg Aviation/Hromoho)	“ “

It is anticipated at this time that the stated subject matter will be made public on or about the time set forth in Exhibit “A”.

2. This Resolution shall take effect immediately.

A **MOTION** was made by Mr. Gatti to adopt this resolution, seconded by Mrs. Allen with a vote of ayes all, nays none recorded.

The meeting reconvened at 7:46 p.m.

Mayor Auriemma led those present in the *Salute to the Flag*.

**Mayor Auriemma announced that the following business was completed during Executive Session:**

***Land Acquisition/Contract Negotiations/Block 25, Lot 7 (Mountain Road)(Caivano)***

This matter was not discussed in Executive Session.

***Contract Negotiations/Arc of Hunterdon***

A **MOTION** was made by Mr. Gatti to approve the form of the Affordable Housing agreement, Deed Restriction, Mortgage and Note of 185 Milkweed Court and 405 Ferncrest Court, seconded by Mrs. Allen and on Roll Call vote the following was recorded:

Mrs. Allen	- Aye
Mr. Gatti	- Aye
Mrs. Muir	- Aye
Mr. Shamey	- Aye
Mayor Auriemma	- Aye

***Litigation/COAH Appeal/Pietrazsweski***

Mayor Auriemma stated this matter remains in Executive Session.

***Land Acquisition/Contract Negotiations/HannaSqa (Block 75, Lot 33)***

The following Resolution was offered for consideration:

***R-2008-117***

***TOWNSHIP OF READINGTON***

***RESOLUTION***

**WHEREAS**, the State Agriculture Development Committee (SADC) certified the Fair Market Value (FMV) of \$22,000 per acre for the development easement on the HannaSqa (Block 75, Lot 33 - 118 acres) farm, which is contained in Readington Township’s 2005A Round Planning Incentive Grant II list of farms; and

**WHEREAS**, the SADC approved the ten (10) year allocation of \$1,531,200.00 to be appropriated from the Garden State Preservation Trust, Farmland Preservation Fund, for Readington Township’s Planning Incentive Grant VIII application, conditioned upon Garden State Preservation Trust, legislative and gubernatorial appropriation; and

**WHEREAS**, based on Readington Township’s application, the County of Hunterdon will provide a cost share for the purchase of the development easements, holding title to the development easements.

**NOW, THEREFORE, BE IT RESOLVED**, that the Township Committee of the Township of Readington, County of Hunterdon, State of New Jersey:

**Resolution #R-2008-117 cont'd:**

1. Approves the purchase of the development easement on Block 75, Lot 33 (HannaSaqa).
2. Commits to funding of the purchase of the development easement on Block 75, Lot 33 (HannaSaqa).
3. Authorizes funding pursuant to the Township's ten (10) year funding plan.

**BE IT FURTHER RESOLVED**, that the Municipal Clerk is directed to forward certified copies of this Resolution to the County Agricultural Development Board and the State Agricultural Development Committee as requested and required.

A **MOTION** was made by Mrs. Allen to adopt this resolution, seconded by Mrs. Muir and on Roll Call vote the following was recorded:

Mrs. Allen - Aye  
Mr. Gatti - Aye  
Mrs. Muir - Aye  
Mr. Shamey - Aye  
Mayor Auriemma - Aye

**Contract Negotiations/Agreement for Vehicle Fueling/Three Bridges Volunteer Fire Co.**

Mayor Auriemma stated this matter remains in Executive Session.

**Personnel/Construction Office**

A **MOTION** was made by Mr. Gatti to appoint Albert Kugler as Temporary Plumbing Inspector at a rate of \$30 per hour, not to exceed 60 days, seconded by Mrs. Allen and on Roll Call vote the following was recorded:

Mrs. Allen - Aye  
Mr. Gatti - Aye  
Mrs. Muir - Aye  
Mr. Shamey - Aye  
Mayor Auriemma - Aye

**Personnel/Emergency Management**

Mayor Auriemma stated this matter remains in Executive Session.

**Attorney-Client Privilege/Executive Session Minutes (September 15, 2008)**

A **MOTION** was made by Mrs. Allen to approve the Executive Session Minutes of September 15, 2008 for content only, seconded by Mr. Shamey with a vote of ayes all, Mrs. Muir recused herself since she did not attend the meeting.

**Litigation/Block 48, Lot 23; Block 55, Lot 33; Block 56, Lot 1, 3, 6 & 8; Block 39, Lot 24 and Block 67, Lot 2 (Solberg Aviation/Hromoho)**

Mayor Auriemma stated this matter remains in Executive Session.

**CONSENT AGENDA:**

Mayor Auriemma read the following statement:

All items listed with an asterisk "\*" are considered to be routine by the Township Committee and will be enacted by one motion. There will be no separate discussion of these items unless a

committee member or citizen requests, in which event the item will be removed from the General Order of Business and considered in its normal sequence on the agenda.

- \*1. **APPROVAL OF MINUTES** of meeting of September 15, 2008.
- \*2. **Anderson House** – request for reimbursement of permit fees for 2008 Seafood Festival
- \*3. **2008 Cooperative Purchase of Gasoline and Ultra Low Sulfur Diesel Fuel** – resolution

The following Resolution was offered for consideration:

**R-2008-118**

**TOWNSHIP OF READINGTON  
RESOLUTION AUTHORIZING HUNTERDON COUNTY EDUCATIONAL SERVICES  
COMMISSION COOPERATIVE PURCHASES**

**WHEREAS**, the Township of Readington wishes to purchase gasoline and ultra low sulfur diesel fuel from an authorized vendor under the Hunterdon County Educational Services Commission (ESC) Cooperative Purchasing Program; and

**WHEREAS**, the purchase of goods and services by local contracting units is authorized by the Local Public Contracts Law, *N.J.S.A. 40A:11-12*; and

**WHEREAS**, Allied Oil, 25 Old Camplin Road, Hillsborough, NJ 08844 has been awarded Hunterdon County ESC Cooperative Contract for gasoline and ultra low sulfur diesel fuel for the period one (1) year; and

**WHEREAS**, the purchasing agent recommends the utilization of this contract on the grounds that it represents the best price available; not to exceed \$56,000; and

**WHEREAS**, the Chief Finance Officer has certified the availability of funds for this contract.

**NOW THEREFORE BE IT RESOLVED**, by the Township Committee of the Township of Readington, County of Hunterdon, State of New Jersey, that Allied Oil be awarded a contract for gasoline and ultra low sulfur diesel fuel; and

**BE IT FURTHER RESOLVED**, The Mayor and Township Clerk are hereby authorized to sign the contract documents necessary to effectuate the award of this contract. The Township Attorney shall review any and all contractual documents prepared in furtherance of this award; and

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

- \*4. **Readington Community Theatre** – seeking approval to hang banner for holiday production of “The Homecoming”
- \*5. **Request for Permit Refund** - Block 42, lot 12.03 (Hollain)
- \*6. **Request for refund of escrow**- Block 62, Lot 12 (Ruse/Dennis)
- \*7. **Firemen’s Membership Application** – Jason J. Jardine
- \*8. **Payment of Bills**

<u>Fund Description</u>	<u>Fund No.</u>	<u>Received Total</u>
CURRENT FUND	8-01	\$ 624,070.27
SEWER APPROPRIATIONS	8-02	\$ 101,087.36
TRUST FUNDS	X-03	\$ 45,886.72
2004 CAPITAL APPROPR.	X-04	\$ 20,250.00
MISC REFUND, COUNTY TAX, LIENS	X-05	\$ 71,180.23
PAYROLL DEDUCTIONS	X-06	\$ 282,307.49
REGIONAL & LOCAL SCHOOL TAX	X-07	\$2,546,343.00
2003 CAPITAL APPROPR.	X-33	\$ 3,859.92
2008 CAPITAL ORDIN.	X-88	<u>\$1,003,537.92</u>
<b>TOTAL OF ALL FUNDS</b>		<b>\$ 4,698,522.91</b>

A **MOTION** was made by Mrs. Muir to approve the Consent agenda, seconded by Mr. Gatti and on Roll Call vote the following was recorded.

Mrs. Allen - Aye  
 Mr. Gatti - Aye  
 Mrs. Muir - Aye  
 Mr. Shamey - Aye  
 Mayor Auriemma - Aye

**PUBLIC HEARING:**

As it was after 8:00 p.m., A **MOTION** was made by Mr. Shamey to adjourn the regular meeting to hold a Public Hearing. This motion was seconded by Mr. Gatti with a vote of ayes all, nays none recorded.

Clerk read by Title:

**AN ORDINANCE AUTHORIZING THE SALE OF AFFORDABLE  
 HOUSING PROPERTY KNOWN AS 109 DOVE COTE COURT IN THE  
 TOWNSHIP OF READINGTON, COUNTY OF HUNTERDON AND STATE  
 OF NEW JERSEY**

**ORDINANCE #28-2008**

Mayor Auriemma asked if there were any comments from the Governing Body.

There were none.

Mayor Auriemma asked if there were any comments from the public.

There were none.

A **MOTION** was made by Mr. Gatti to close the Public Hearing and open the regular meeting, seconded by Mrs. Muir with a vote of ayes all, nays none recorded.

Clerk read by Title:

**AN ORDINANCE AUTHORIZING THE SALE OF AFFORDABLE  
 HOUSING PROPERTY KNOWN AS 109 DOVE COTE COURT IN THE  
 TOWNSHIP OF READINGTON, COUNTY OF HUNTERDON AND STATE  
 OF NEW JERSEY**

**ORDINANCE #28-2008**

A **MOTION** was made by Mr. Gatti to adopt this Ordinance, seconded by Mrs. Muir and on Roll Call vote the following was recorded:

Mrs. Allen - Aye  
Mr. Gatti - Aye  
Mrs. Muir - Aye  
Mr. Shamey - Aye  
Mayor Auriemma - Aye

A **MOTION** was made by Mr. Gatti to adjourn the regular meeting to hold a Public Hearing. This motion was seconded by Mrs. Allen with a vote of ayes all, nays none recorded.

**CORRESPONDENCE/OTHER INFORMATION:**

1. Memorandum dated September 9, 2008 from Sue Dziamara, Planning Board Director, regarding ***Partnership for Mass Transit and Rail in Hunterdon and Somerset County***. No action taken.
2. Resolution from Diane L. Seals, Municipal Clerk, Borough of High Bridge regarding ***Requesting and Support and Adoption of Legislation Granting an Adoptee Access to their Birth Certificate***. No action taken.
3. Memorandum dated September 11, 2008 from Donna J. Burham, Municipal Clerk of Township of Clinton, regarding ***an Ordinance Supplementing and Amending Chapter 165 Entitled “Land Use Regulations” (Amending Standards and the Schedule of Zoning Requirements) of The Code of the Township of Clinton, 2003, to regulate the Installation and Operation of Solar Energy Systems in Clinton Township***. No action taken.
4. Memorandum dated September 10, 2008 from James Humphries, Township Planner, Raritan Township regarding ***a public hearing on a proposed Comprehensive Farmland Preservation Plan amendment to the Township Master Plan***. No action taken.
5. Letter dated September 12, 2008 from Michael J. Filippone, Director Rates and Regulatory Affairs, Jersey Central Power & Light regarding ***Annual Proposal for Basic Generation Service (“BGS”)***. No action taken.
6. Letter dated September 11, 2008 from William G. Dressel, Jr., Executive Director, New Jersey State League of Municipalities regarding ***A Proclamation – October National Planning Month***. No action taken.
7. Letter dated September 5, 2008 from Gloria Grant, Section Chief, Northern Bureau of Field Operations, Department of Environmental Protection, regarding ***Soils Remedial Action Report and Ground Water Site Investigation Report, 18 Century Road, Readington Township***. No action taken.
8. Letter dated September 9, 2008 from Yacoub Yacoub, Bureau Chief, Northern Bureau of Field Operations, Department of Environmental Protection, regarding ***No Further Action Letter and Covenant Not to Sue, 527 Old York Road, Readington Township***. No action taken.
9. Letter from Ronald Corcoran, Assistant Director, Enforcement & Assignment Element, Department of Environmental Protection, regarding ***NJDEP Child Care Facility Approval Letter, 1083 Rt. 523, Readington Township***. No action taken.
10. Letter from Lou Cattuna, Northern Delaware Regional Supervisor, Bureau of Inland Regulation, Department of Environmental Protection regarding ***Freshwater Wetlands Letter of Interpretation/Line Verification, Block 39,***

- Lot 53.10, Readington Township.** (Entire File Available for Review in Clerk's Office) No action taken.
11. Letter dated September 11, 2008 from Amy S. Greene, President, Amy S. Greene Environmental Consultants regarding ***Request for NJDEP Letter of Interpretation, Regulatory Line Verification, Block 25, Lot 44, Readington Township.*** (Entire File Available for Review in Clerk's Office) No action taken.
  12. Memorandum dated September 18, 2008 from Donna J. Burham, Municipal Clerk, Township of Clinton regarding ***an Ordinance Supplementing and Amending Chapter 165 Entitled "Land Use Regulations" (Amending Standards and the Schedule of Zoning Requirements) of The Code of the Township of Clinton, 2003, to Regulate the Installation and Operation of Solar Energy Systems in Clinton Township.*** No action taken.
  13. Memorandum dated September 18, 2008 from Grace A. Kocher, Secretary of the Land Use Office, Township of Union, regarding ***A Resolution Adopted the Scenic Byway Designation on portions of Route 78.*** No action taken.
  14. Resolution from the Borough of Glen Gardner regarding ***Opposing Charge to Rural Municipalities for Costs of NJ State Police.*** No action taken.
  15. Notice of Filing and Public Hearing from Frances I. Sundheim, Vice President and Corporate Rate Counsel, Public Service Electric and Gas Company regarding ***Proposed Carbon Abatement Program and an Associated Cost Recovery Mechanism.*** No action taken.
  16. Letter dated September 23, 2008 from Gloria Walker, Jeff Tareila Environmental Consultants regarding ***an application for a permit or approval to NJ Dept of Environmental Protection, Block 63, Lot 50, Township of Readington.*** (Entire File Available for Review in Clerk's Office) No action taken.
  17. Letter dated September 24, 2008 from Margaret Waldock, Executive Director, Hunterdon Land Trust Alliance regarding ***Nov. 4<sup>th</sup> Referendum to Continue the Hunterdon County Open Space, Recreation, Farmland and Historic Preservation Trust Fund.*** No action taken.
  18. Letter dated September 29, 2008 from William G. Dressel, Jr., Executive Director, New Jersey League of Municipalities regarding ***A-2371 Expedited Traffic Sign Approvals.*** No action taken.
  19. Letter dated September 29, 2008 from William G. Dressel, Jr., Executive Director, New Jersey League of Municipalities regarding ***Governor Corzine's signing of the Pension and Benefits Reform Act of 2008.*** No action taken.
  20. Letter dated September 12, 2008 from Edward A. Kuc, Principal Ecologist, Eastern States Environmental Associates, Inc. regarding ***application for permit or approval to the NJ Dept of Environmental Protection, Block 34, Lot 10, Township of Readington*** (Entire File Available for Review in Clerk's Office) No action taken.
  21. Letter dated September 12, 2008 from Edward A. Kuc, Principal Ecologist, Eastern States Environmental Associates, Inc. regarding ***application for permit or approval to the NJ Dept of Environmental Protection, Block 32, Lot 12, Township of Readington*** (Entire File Available for Review in Clerk's Office) No action taken.

**OLD BUSINESS:**

None.

**NEW BUSINESS:**

1. **Board of Education** – update on construction

Dr. Jordan Schiff, of Readington Board of Education and Annette Marsh, Vice President of the school board presented an update on the construction of the Readington Middle School. Dr. Jordan Schiff thanked the community for their support.

2. **An Ordinance authorizing a licensing agreement between the Township of Readington and Fibertech Networks, LLC to permit the installation, use and maintenance of telecommunications facilities within certain public right-of-way for the purpose of providing telecommunications services**

The following Ordinance was offered for introduction:

**AN ORDINANCE AUTHORIZING A LICENSING AGREEMENT  
BETWEEN THE TOWNSHIP OF READINGTON AND FIBER TECHNOLOGIES  
NETWORKS, LLC TO PERMIT THE INSTALLATION, USE AND MAINTENANCE  
OF TELECOMMUNICATIONS FACILITIES WITHIN CERTAIN PUBLIC RIGHTS-  
OF-WAY FOR THE PURPOSE OF PROVIDING TELECOMMUNICATIONS  
SERVICES**

**Ordinance #29 - 2008**

**WHEREAS**, Fiber Technologies Networks, LLC. ("*Fibertech*"), a New York limited liability company, with offices located at 300 Meridian Centre, Rochester, New York, is authorized to provide local exchange and interexchange telecommunications services throughout the State of New Jersey pursuant to an Order issued by the New Jersey Board of Public Utilities ("NJBPU") in Docket No. TE05080683, dated September 14, 2005; and

**WHEREAS**, *Fibertech* has requested consent of the Township of Readington ("Township") to use and occupy certain public rights-of-way located within the Township for a period of ten (10) years for the purpose of constructing, installing, operating, repairing, maintaining and replacing a telecommunications system, which consists of the laying of fiber optic cable; and

**WHEREAS**, *Fibertech* desires to build its facilities in designated portions of the Township's right-of-ways, by attaching said facilities on or in existing utility infrastructure, ie. poles or underground conduit, thus causing minimal disruption to the Township and its residents, and has agreed to abide by the Township's current and future policies and rules regarding placement of facilities in the public right-of-ways; and

**WHEREAS**, the Township Committee of the Township of Readington believes that granting such municipal consent, with certain conditions, will be beneficial to both the municipality and citizens of the Township of Readington, including commercial and industrial taxpayers within the Township, as it will help provide advanced telecommunication services to these citizens; and

**WHEREAS**, the Township is authorized to enact this ordinance pursuant to N.J.S.A. 40: 67-6, et seq.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF READINGTON:**

**SECTION 1. SCOPE OF LICENSE**

(a) The Township agrees to grant a non-exclusive license to *Fibertech* to place facilities in or on existing utility infrastructure, ie. poles or underground conduit, within those portion of public right-of-ways within the Township which are owned and/or within the jurisdictional control of the Township, for the purpose of providing services, as shown by the map provided by *Fibertech*, a copy of which is on file with the Township Clerk. The Township's consent to this license shall be "non-exclusive", meaning that other companies may request and receive licenses from the Township for the same purpose as this Ordinance.

***Ordinance #29-2008 cont'd:***

(b) No other services, other than telecommunications services as described herein, will be provided without the express consent of the Township, which must be memorialized in an amendment to this ordinance and a written agreement.

(c) Nothing in this license shall be deemed to grant, convey, create or vest in *Fibertech* a real property interest in land, including any fee, leasehold interest, easement or any other form of interest or ownership.

**SECTION 2. DEFINITIONS**

**For the purposes of this Ordinance:**

"**BPU**" means the New Jersey Board of Public Utilities.

"**Facilities**" means fiber optic wires, cables, underground conduits, manholes or other structures or appurtenances that allow delivery of telecommunications services.

"**Fibertech**" means the grantee of rights under this Ordinance and is known as Fiber Technologies Networks LLC, its successors and/or assigns.

"**Public right-of-way**" means the areas devoted to passing under, over, on or through public utilities located upon or within a public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the Township holds a property interest or exercises rights of management or control.

"**Public Utility**" means any public utility defined in N.J.S.A. 48: 2-13.

"**Township**" is the Township of Readington, County of Hunterdon, State of New Jersey.

"**Utility Pole**" means, in addition to its commonly accepted meaning, any wires or cable transport of analog or digital signals for telecommunications originated or terminated inside and/or outside of the Readington Township local service area.

**SECTION 3. CONSTRUCTION OBLIGATIONS**

(a) *Fibertech* shall be subject to the police powers of the Township, other governmental powers, and the Township's rights as a property owner under state and federal laws. *Fibertech* is subject to Township requirements and federal and state rules in connection with the construction, expansion, reconstruction, maintenance or repair of facilities in the public right-of-ways.

(b) *Fibertech* shall place certain facilities underground according to applicable Township requirements.

(c) Prior to the start of any construction or placement of its intended facilities within the Township's public right of ways, *Fibertech* shall notify the Township through its Construction Code Official, Township Engineer and Director of Public Works. At the Township's request, *Fibertech* shall furnish the Township accurate and complete information relating to the construction, reconstruction, removal, maintenance, operation and repair of the facilities performed by *Fibertech* in the public right-of-ways. If any information furnished is erroneous as to the location of facilities, and reliance on this information results in construction delays or additional expenses, *Fibertech* shall be liable for the cost of delays and the additional expenses.

(d) The construction, expansion, reconstruction, excavation, use, maintenance and operation of *Fibertech's* facilities and property are subject to applicable Township requirements:

- (1) *Fibertech* shall perform excavations and other construction in the public right-of-ways in accordance with all applicable Township requirements and in a workmanlike manner.

*Fibertech* shall minimize interference with the use of public and private property and shall follow the construction directions given by the Township, including coordination with the police department for traffic safety requirements in a manner which shall cause the least disturbance to the public, as well as compliance with the Township's Noise control ordinances.

**Ordinance #29-2008 cont'd:**

- (2) When *Fibertech* completes construction work, shall promptly restore the public right-of-way in accordance with applicable Township requirements. If determined necessary by the Township Engineer and/or Director of Public Works, prior to the start of any construction, *Fibertech* shall obtain a performance bond for the benefit of the Township to secure *Fibertech's* performance of all work within the public right-of-ways, including the restoration of the public right-of-ways disturbed by the work, in the amount required by Township ordinances then in effect. The performance bond shall remain in effect until the Township Engineer and Director of Public Works has approved the restoration. *Fibertech* may excavate only for the construction, installation, expansion, repair, removal and maintenance of *Fibertech* facilities.
- (3) The Township may require *Fibertech* to allow attachment of another provider's facilities to its poles and conduits, in accordance with the Township charter, state and federal law. Further, prior to attachment by *Fibertech*, *Fibertech* shall ascertain which other providers may have facilities attached to the poles *Fibertech* wishes to use and shall give 30 days notice to such other providers. *Fibertech's* use of the poles are subject to items (a) and (b) below. The Township agrees to request future providers to give notice to *Fibertech* no later than 30 days prior to the attachment by the provider and these attachments shall:
  - (a) be subject to space availability; and
  - (b) not interfere with *Fibertech's* use of its facilities. Nothing in this section shall relieve any other person, agency or utility from liability for damage to the facilities.
- (4) *Fibertech* shall furnish the Director of Public Works with construction plans and maps showing the routing of new construction at least 30 days before beginning construction that involves an alteration to the surface or subsurface of the public right-of-way. *Fibertech* may not begin construction until the plans and drawings have been approved in writing by the Director of Public Works.
- (5) For construction that involves a minor alteration to the surface or subsurface of the public right-of-way, and does not involve the routing of new facilities, the Director of Public Works shall implement a streamlined permitting process of less than 10 days.
- (6) If the Director declares an emergency and requests the removal or abatement of facilities, by written notice, *Fibertech* shall remove or abate *Fibertech's* facilities by the deadline provided in the Director's request. *Fibertech* and the Township shall cooperate to the extent possible to assure continuity of service. If *Fibertech*, after facsimile and telephone notice, fails or refuses to remove or abate *Fibertech's* facilities by the date provided in the Director's request, the Township may remove or abate the facility, at the sole cost and expense of *Fibertech*, without paying compensation to *Fibertech* and without the Township incurring liability for damages.
- (7) *Fibertech* may not excavate the pavement of a street or public right-of-way without first complying with Township requirements.
  - (e) *Fibertech* shall pay all applicable permitting and inspection fees established by ordinance at the time of construction related to its construction in the public rights-of-way.
  - (f) *Fibertech* may utilize, if feasible, existing or abandoned conduit of other utilities, subject to approval of the utility.

**SECTION 4. CONDITIONS OF RIGHT-OF-WAY OCCUPANCY.**

- (a) In the exercise of governmental functions, the Township has first priority over all other uses of the public right-of-ways. The Township reserves the right to cables and conduits, and to do underground and overhead work, and attachment, restructuring or changes in aerial facilities in, across, along, over or under a public street, alley or right-of-way occupied by *Fibertech*, and to change the curb, sidewalks or the grade of streets and roads.
- (b) If, during the term of the license, the Township authorizes abutting landowners to occupy space under the surface of any public street, alley or right-of-way, the grant to an abutting landowner shall be subject to the rights of *Fibertech* described in this ordinance. If the Township closes or abandons a public right-of-way that contains a portion of *Fibertech* facilities, the Township shall convey the land in the closed or abandoned public right of way subject to the rights of *Fibertech* described in this Ordinance.

**Ordinance #29-2008 cont'd:**

(c) If the Township gives written notice, *Fibertech* shall, at *Fibertech's* expense, temporarily or permanently, remove, relocate, change or alter the position of *Fibertech's* facilities that are in the public rights within 120 days. The Township shall give notice whenever the Township has determined that removal, relocation, change or alteration is reasonably necessary for the construction, operation, repair, maintenance or installation of a Township or other governmental entity's public improvement in the public rights-of-way. This section shall not be construed to prevent *Fibertech's* recovery of the cost of relocation or removal from private third parties who initiate the request for relocation or removal or from governmental entities that have funds authorized for the payment of the relocation or removal costs. In the event of joint relocation projects, *Fibertech* shall be responsible for its proportionate share of the relocation costs.

(d) During the term of the license, *Fibertech* may, if necessary, trim trees and vegetation in or over the right-of-ways for the safe and reliable operation, use and maintenance of its network. However, all tree trimming shall be performed in accordance with standards promulgated by the Township and not without 10 days' notice given to the Township and adjacent property owners. When ordered by the Township Engineer, Construction Code Official, or Director of Public Works, *Fibertech* shall undertake, tree and vegetation trimming under the supervision of the Township.

(e) *Fibertech* shall temporarily remove, raise or lower its aerial facilities to permit the moving of houses or bulky structures, if the Township gives written notice of no less than 72 hours. The expense of the temporary rearrangement shall be paid by the party or parties requesting and benefitting from the temporary rearrangement. *Fibertech* may require prepayment or prior posting of a bond from the party requesting the temporary move.

**SECTION 5. INDEMNITY AND INSURANCE.**

(a) During the term of this license, *Fibertech* shall be liable for the acts or omissions of an entity used by *Fibertech*, including an affiliate, when the entity is involved directly or indirectly in the construction and installation of *Fibertech's* facilities. The acts or omissions of the entity shall be considered the acts or omissions of *Fibertech*.

(b) *Fibertech* shall, and agrees to, defend, indemnify and hold the Township harmless against all damages, cost, loss or expense arising out of, incident to, concerning or resulting from the negligence or willful misconduct of *Fibertech*, its agents, employees, or subcontractors, in the performance of activities under this Ordinance for:

- (1) the repair, replacement, or restoration of Township property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective; and
- (2) any and all claims, demands, suits, causes of action, and judgments for:
- (3) damage to or loss of the property of any person including, but not limited to *Fibertech's*, its agents, officers, employees and subcontractors, the Township's agents, officers and employees, and third parties; and
- (4) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person including but not limited to the agents, officers and employees of *Fibertech*, *Fibertech's* subcontractors, the Township, and third parties, no matter how, or to whom, the loss may occur.

(c) The Director or Township Administrator shall give prompt written notice to *Fibertech* of any claim for which the Township seeks indemnification. *Fibertech* shall have the right to investigate, defend and compromise these claims subject to the Township Attorney's prior approval.

(d) *Fibertech* shall, at its sole expense, provide and maintain a comprehensive liability insurance policy with: (1) a single amount of at least One Million Dollars (\$1,000,000.00) covering liability for any death, personal injury, property damage or other liability arising out of the construction and operation contemplated herein; (2) extended public liability insurance coverage, in an amount not less than \$500,000 for personal injury and (3) \$500,000 for property damage, specifically naming the Township of Readington as co-insured, and an excess liability policy (or "umbrella" ) policy in the amount of Five Million Dollars (\$5,000,000.00); or an equivalent means of providing the Township

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protection from the activities of *Fibertech*, its officers, employees, agents, or contractors, relative to this license. A copy of the instruments effecting this coverage shall be delivered to the Director of Public Works of the Township within forty-five days after the execution date of this license, and prior to the commencement of any work pursuant to this License. The Township shall notify *Fibertech* within fifteen (15) days after the presentation of any claim or demand to the municipality, either by suit or otherwise, made against the Township on account of any of *Fibertech's* or its sub-contractors, agents, employees, officers, servants, designees, guests and invitees, activities pursuant to the rights granted in this Ordinance.

**SECTION 6. RECORDS**

(a) *Fibertech* shall keep complete and accurate maps, construction drawings and construction drawings and specifications shall provide for separate and specific identification of those facilities located in the public right-of-ways and shall be kept and maintained within the township limits of Readington. *Fibertech* shall also supply the Township Engineer with complete and accurate copies of its maps which identify those facilities which are located on the public right-of-ways.

(b) The Township shall have the right, at reasonable times and with reasonable notice, to inspect the maps, construction drawings and specifications. *Fibertech* shall fully cooperate in making available its maps, construction drawings, and specifications for inspection.

(c) The Township shall maintain confidentiality of all competitively sensitive information to the extent allowed by law.

**SECTION 7. NOTICE**

(a) The Township Engineer and Director of Public Works of Readington are the Township of is the Township official responsible for the administration of this ordinance. *Fibertech* shall direct questions construction to the Director of Public Works. All other questions regarding the interpretation or application of this Ordinance shall be addressed to the Township Engineer.

(b) All notices to the Township shall be to:

Township Clerk  
  
Township Of Readington  
509 Route 523  
Whitehouse Station, NJ 08889

or to any other address as the TOWNSHIP may designate from time to time by written notice.

(c) All notices to *Fibertech* shall be sent to:

Fiber Technologies Networks, LLC.  
Contracts Administration 300  
Meridian Centre Rochester,  
New York 14618

With a copy to:

Richard P. DeAngelis, Jr., Esq.  
Stryker, Tams & Dill, LLP Two  
Penn Plaza  
Newark, New Jersey 07105

or to any other address *Fibertech* may designate from time to time by written notice.

**SECTION 8. ASSIGNMENT**

The license approved by this Ordinance shall not be assigned without the express consent of the Township Committee of the Township of Readington, except that *Fibertech* may assign its rights under this Ordinance to another provider who has a municipal consent from the Township or to a parent, subsidiary, affiliate or successor entity without the Township's consent, so long as the parent, subsidiary, affiliate or successor (1) assumes all obligations of *Fibertech* under this ordinance; (2) is bound to the same extent as *Fibertech*; and (3) is under common ownership and control with *Fibertech*. Consent to a transfer of interest, which is made in the ordinary course of business, shall not be unreasonably denied

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by the Township.

**SECTION 9. TERMINATION**

(a) The Agreement approved by this Ordinance may be terminated by *Fibertech* by delivering written notice to the Township at least sixty days before the effective date of termination, provided *Fibertech* ceases provision of Telecommunications Services within the sixty day period.

(b) In the event of termination by *Fibertech* under this section, unless otherwise agreed to in writing by the Township, *Fibertech* shall remove its facilities from the licensed public properties and shall restore those public rights-of-ways disturbed by the removal so that they are left in the same condition as before. If it is anticipated that removal might cause such a disturbance, the Township may require *Fibertech* to post a performance bond to cover the restoration costs in the event *Fibertech* does not perform according to this agreement. Such performance bond shall remain in place until the Township Engineer or Director of Public Works determines that the restoration has been performed in a manner satisfactory to the Township.

(c) The Township may terminate of the license approved by this Ordinance by delivering written notice to *Fibertech* a t least 30 days prior to the effective date of such termination, if *Fibertech* fails to abide by the terms of this Ordinance and does not cure such failure within 45 days after written notice from the Township; or *Fibertech* is found to be offering services not allowed by this license and does not cease to offer such services within 45 days after receipt of written notice from the Township.

**SECTION 10. TERM. RENEWAL AND AMENDMENTS**

(a) This license is granted for a term of ten (10)years, beginning on the effective date of this Ordinance or the date the license Agreement is signed by all parties, whichever occurs later.

(b) *Fibertech* has an option to renew this license for an additional ten (10) years on the same terms and conditions, provided *Fibertech* has fully complied with all material terms and conditions in this Ordinance. *Fibertech* must file a written notice to the Township of its election to exercise the renewal option at least six (6) months prior to expiration of the original term of this license.

(c) *Fibertech* or its successors or assignees and the Township agree to begin good faith negotiations for a new license no later than nine (9) months before the expiration of this license. If on the expiration date of this license no new licensing agreement has been executed, the Township of Readington may (1) purchase the facilities at the fair market value, (2) request *Fibertech* to remove the facilities; or (3) allow *Fibertech* to abandon the facilities.

**SECTION 11. INCORPORATION OF THE APPLICATION AND AGREEMENT**

The terms of *Fibertech's* letter application for this license are hereby incorporated in this Ordinance, together with the license agreement between *Fibertech* and the Township. The letter application and license agreement and other relevant writings submitted by *Fibertech* are made a part hereof and shall remain on file with the Township Clerk's office.

**SECTION 12. AUTHORIZATION**

The Mayor, Deputy Mayor and Township Clerk/ Administrator are hereby authorized to sign the License Agreement and any other documents necessary to implement this Ordinance.

**SECTION 13. MUNICIPAL COSTS.**

As a condition of the License Agreement, *Fibertech* shall be responsible for the reimbursement of the reasonable costs incurred by the Township in connection with *Fibertech's* request for the Township's consent to install and maintain its telecommunications system within the Township, including, but not limited to, the Township's attorney's fees for the negotiation and preparation of the Agreement and this Ordinance.

**SECTION 14. SEVERABILITY.**

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, then such portion shall be deemed a separate, distinct and independent provision, severable from the remainder of this Ordinance, and such holding shall not affect the validity of the remaining portions of the Ordinance.

**SECTION 15. EFFECTIVE DATE**

This Ordinance shall become effective immediately upon approval by the Township Committee, but may be withdrawn if *Fibertech* does not enter into the License Agreement with the Township acknowledging and agreeing to abide by the terms of this Ordinance and, further, providing proof that the applicable

**Ordinance # 29-2008 cont'd:**

utilities company(ies) have agreed to the use of its (their) poles for the purposes expressed in *Fibertech's* application to the Township for this license.

A **MOTION** was made by Mrs. Allen to introduce this Ordinance, seconded by Mrs. Muir and on Roll Call vote the following was recorded:

Mrs. Allen	- Aye
Mr. Gatti	- Aye
Mrs. Muir	- Aye
Mr. Shamey	- Aye
Mayor Auriemma	- Aye

A Public Hearing was scheduled for 8:00 p.m. on October 20, 2008.

3. **Emergency Services/Hazardous Substances Abatement** – consideration of an ordinance

Mayor Auriemma stated that our fire companies have requested that the Committee consider an ordinance that would allow them to recoup costs incurred by the Township and Emergency Services Company as a result of clean up or abatement of a discharge of any hazardous waste spillage. This ordinance is in place in other municipalities and a sample was provided for discussion. The Committee requested that Attorney Dragan review the sample ordinance and that it be listed on the next agenda for consideration.

4. **Country Classics at Readington, Block 36, Lots 93, 94 & 95** – request for Bond reduction

Engineer McEldowney requested that this matter be deferred.

**ADMINISTRATOR'S REPORT**

Administrator Mekovetz stated that she received notice that the Township was approved for \$8,000 from the Recreation Trails Program and the Readington Trail Association for a trail grant for \$13,500.

**ATTORNEY'S REPORT**

Attorney Dragan stated she had nothing further to report.

**ENGINEER'S REPORT**

Engineer McEldowney updated the Committee on Road Improvement Program which completed twelve (12) subdivision streets. Engineer McEldowney stated Department of Public Works was very effective in employing their own workforce to assist in this program and felt this is a program worth continuing next year. Engineer McEldowney stated Bank Street has been prepared for paving which should take place this week. Engineer McEldowney stated the Old Highway 28 project was completed. Engineer McEldowney stated he received confirmation of a site meeting on Rockafellow Mills Bridge

**COMMITTEE REPORTS**

**Thomas Auriemma**

Mayor Auriemma stated he visited Hunterdon Paint store and the owner of the store complimented him on the professionalism of Zoning and Construction Departments.

**Julia Allen**

Mrs. Allen reported that the tree planting took place on Saturday with 106 volunteers assisting in planting 341 trees. Approximately 100 remain to be planted on Saturday, October 11<sup>th</sup>. Mrs. Allen stated this is a result on the NRCS grant.

Mrs. Allen stated Sunday is the next Open Space Walk on the Natural Wildlife Management Area.

**Frank Gatti**

Mr. Gatti reported that a recommendation from the Police Department regarding ATV's and the noise ordinance will be forthcoming.

Mr. Gatti reported that a meeting with Comcast was held to address complaints of residents received through the recent survey. Mr. Gatti stated that Comcast acknowledged problems encountered with the move from Patriot to Comcast and were hiring additional help to handle the complaints and provide the best service to our residents.

**Mrs. Muir**

Mrs. Muir stated well testing kits are now available.

**Gerard Shamey**

Mr. Shamey referred to letters received from residents praising Scott Hulcher for his work and efficiency.

The Committee requested that a letter of commendation be sent to Mr. Hulcher as well as the Code Enforcement and Zoning Office on behalf of the Township Committee and the residents.

***COMMENTS FROM THE PUBLIC***

There were none.

***COMMENTS FROM THE GOVERNING BODY***

There were none.

As there was no further business, ***A MOTION*** was made by Mr. Gatti at 8:56p.m. to adjourn the meeting, seconded by Mr. Shamey with a vote of all ayes, nays none recorded.

Respectfully Submitted:

Vita Mekovetz, RMC/MMC/RPPO  
Administrator/Municipal Clerk