

Regular & Work Session Meeting Minutes - September 7, 2011

The regular meeting of the Township Council of the Township of Lower, County of Cape May, State of New Jersey was held on September 7, 2011 at 7:00 p.m. in the meeting room of the Township Hall, 2600 Bayshore Road, Villas, New Jersey.

The Clerk announced that the meeting was being held in compliance with the Open Public Meetings Act and that adequate notice of the meeting had been provided according to law.

The following members of Council were present for roll call taken by the Clerk:

Councilmember Thomas Conrad
Councilmember Erik Simonsen
Councilmember Glenn Douglass
Deputy Mayor Kevin Lare
Mayor Michael Beck

Also present: Michael Donohue, Solicitor, Michael Voll, Manager and Recording Clerk, Julie Picard

PRESENTATION

Chief Marker highlighted Sgt. Thomas Keywood's career with the Township prior to the presentation of a retirement plaque by the Mayor and Council.

Mayor Beck and Council thanked Sgt. Keywood for his 21 years of service to the Township and wished him well in his future endeavors. A round of applause was given.

OATH OF OFFICE - POLICE DEPARTMENT

Mayor Beck with Council in attendance, administered the Oath of Office to Sgt. Patrick Greene while his wife held the Bible. Chief Marker then asked Sgt. Greene's wife to pin on his new badge, after which he received a round of applause & congratulations from the Mayor, Council and public.

Mayor Beck, with Council in attendance, administered the Oath of Office to Sgt. Ernest Macomber while his son held the Bible. Chief Marker then asked Sgt. Macomber's wife to pin on his new badge, after which, he received a round of applause & congratulations from the Mayor, Council and public.

Mayor Beck, with Council in attendance, administered the Oath of Office to Lt. Thomas Beeby while his children and his father held the Bible. Chief Marker then asked Lt. Beeby's fiancée to pin on his new badge, after which, he received a round of applause & congratulations from the Mayor, Council and public.

Mayor Beck, with Council in attendance, administered the Oath of Office to Lt. Martin Biersbach while his wife held the Bible. Chief Marker then asked Lt. Bierbach's father to pin on his new badge, after which, he received a round of applause & congratulations from the Mayor, Council and public.

Mayor Beck, with Council in attendance, administered the Oath of Office to Captain William Mastriana while his two children held the Bible. Chief Marker then asked Captain Mastriana's wife to pin on his new badge, after which, he received a round of applause & congratulations from the Mayor, Council and public.

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Pastor Michael Smith gave a prayer for the new Police Administration.

Chief Brian Marker congratulated the new Police Administration and thanked the Mayor, Council and Manager for the opportunity to continue providing service to Lower Township and for their continued support.

WORK SESSION

Outdoor Wood Boilers

Solicitor Donohue provided Council with regulations from the DEP regarding outdoor wood boilers. He said the Township Code Section # 230-8 contained a provision dealing with smoke and fumes. The Solicitor said he believed the best thing to do, if the governing body decided to, was to clarify the Ordinance and add a specific provision for outdoor wood burning boilers, making it clear the units had to stick to the DEP standards. If they did not, and the neighbors wanted to sign a complaint, they were entitled to do that. If an official of the township visited the site and made sufficient observation that they were in violation of this ordinance, then that official could sign a local ordinance complaint as well as the neighbor. The Solicitor stated the ordinance before the governing body was a proposed Ordinance that would clarify the Code Book section and expand it a little bit to specifically include the outdoor wood burning boilers and include a provision that a Township Official, in addition to a private citizen, after proper observation, could sign a summons.

Councilman Douglass questioned if that was what the neighbors were looking for.

Deputy Mayor Lare asked was the Township to enforce this ordinance according to the DEP regulations or the Ordinance ?

The Solicitor replied in accordance with the ordinance. If there was a complaint, an official could go out and observe it for a sufficient period of time and draw a conclusion.

Michael Hecko of 2 South Andrielle Lane addressed Council and stated the neighbors had been living with the situation for the last 15 months and he thought Council was making a mistake by letting the neighbor keep the boiler. The Solicitor replied they met the zoning requirements and received a permit for the boiler.

Mayor Beck stated it was a good idea to refer this to zoning and require additional acreage.

Nick Thompson of Andrielle Lane stated the smoke was impacting the neighbors in a detrimental way and he was very disappointed with the ordinance. He asked who to call when his house was filling up with smoke.

Mayor Beck replied the police had the power to enforce any township ordinance.

Deputy Mayor Lare stated it should be treated like a nuisance issue between neighbors.

John Flemming of 8 North Andrielle Lane requested and received a copy of the ordinance.

Review of Consent and Regular Agenda Items

Clerk Kammer stated there was a request from the Emergency Management Director to add a Resolution Authorizing the Township of Lower to Make Application for a Sub-Grant of the Federal Fiscal Year 2011 Department of Homeland Security Emergency Management Performance Grant Program Funding. This would provide funds for the Emergency Management Office part of which had been used for the reverse 911 system. Mr. Harron can then file the Resolution with the application by the required deadline.

Council agreed.

Solicitor Donohue stated 2 minor corrections were being made on Ordinance 2011-16. He stated the \$1.00 per year, the "per year" should come out. It was a \$1.00 nominal consideration. Also there was a statutory reference to 4A:12-21A. In one spot it stated "n" and that will be corrected in the deed.

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Council Comments on the Consent Agenda: No Comments

Motion moved by Councilmember Conrad, second by Councilmember Simonson to add Resolution 2011-256: Authorization for the Township of Lower to Make Application for a Sub grant of the federal Fiscal Year 2011 of Department of Homeland Security Emergency Management Performance Grant Program Funding. **Roll call vote:** Councilmember Conrad "yes", Councilmember Simonsen "yes", Councilmember Douglass "yes", Deputy Mayor Lare "yes", Mayor Beck "yes".

Deputy Mayor Lare asked that Steve Morey's name be inserted in the resolution for the appointment to the Recreation Advisory Board listed in the consent agenda. There was no objection

Public Comment on the Consent Agenda: No Comments

Consent Agenda

- | | |
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| Approval of Minutes | August 15, 2011 |
| Approval | NJ State Fireman's Association - Scott R. Cooley Jr., Villas Volunteer Fire Company and William G. Wilson III, Townbank Volunteer Fire Company |
| Res. #2011-240 | Payment of Vouchers, \$1,885,884.25 |
| Res. #2011-241 | Authorization for Refund of Taxes (8 refunds -1 disabled vet, 1 paid in error & 6 duplicate payments) |
| Res. #2011-242 | Drunk Driving Enforcement Fund Application, \$8,514.15 (Annual application for grant funds) |
| Res. #2011-243 | Adoption of State Model Citizen Participation Plan for DCA Small Cities Program (Required as part of Res. #2011-245) |
| Res. #2011-244 | Identifying Small Cities Fair Housing Officer (Required in connection with grant application - Res. 2011-245) |
| Res. #2011-245 | Approval of Public Facilities Grant Management Plan Removal of Architectural Barriers (Application for \$400,000 to remove barriers for elderly and handicapped at Rec Center and former Fishing Creek Schoolhouse) |
| Res. #2011-246 | Appointment to Recreation Advisory Board (Regular member 3 yr term) |
| Res. #2011-247 | Authorizing Payout of Terminal Leave (T. Keywood \$95,725.80 - Retired) |
| Res. #2011-248 | Authorizing Payout of Terminal Leave (K. McPherson \$52,601 Retired Sept. 1) |
| Res. #2011-249 | Authorizing Payout of Terminal Leave (B. Marker \$29,308.80 pursuant to contract) |
| Res. #2011-250 | Approval to Submit a Grant Application and Execute a Grant Agreement with the New Jersey Department of Transportation for the Beach Drive Access Improvement Project (Authorizing Hatch Mott to prepare and electronically file grant application) |
| Res. #2011-251 | Resolution approving Project Proposal Between Hatch Mott MacDonald and the Township of Lower for Engineering Services Related to Beach Drive Improvement Project \$2500 to prepared and submit the application for construction of pedestrian safety and access improvements to Beach Drive from Lincoln to Pinewood including 6 ft. wide sidewalk for 1.48 miles & ADA improvements at intersections) |

- Res. #2011-252 Acceptance and Contract Award for Suspended Modular Tile Sports Floor System (\$36,632.00 including supervisor for installation - 2 proposals rec'd.)
- Res. #2011-253 Resolution Acknowledging Award of Contract for Natural Gas Services for the South Jersey Power Cooperative (Award to Woodruff Energy for 3 yr term beginning Dec 1, 2011)
- Res. #2011-256 Authorization for the Township of Lower to Make Application for a Sub grant of the federal Fiscal Year 2011 of Department of Homeland Security Emergency Management Performance Grant Program Funding
- Ord. #2011-17 An Ordinance Amending Chapter 230 of the Revised General Ordinances of the Township of Lower 2004 (Amending Article II, Chap. 230, Disorderly Conduct by expanding the prohibition of offensive products of combustion or fumes and allowing for enforcement by Township officials - possible 1st rdg.

The Consent Agenda was approved on motion by Councilmember Douglass, seconded by Councilmember Conrad and the following roll call vote: Councilmember Conrad, "yes", Councilmember Simonsen, "yes", Councilmember Douglass, "yes", Deputy Mayor Lare, "yes", Mayor Beck "yes".

Regular Agenda

- Res. #2011-254 Payment of Voucher to Lower Township Rescue Squad \$35,000. 00 (2011 fuel expense)

The resolution was approved on motion by Councilmember Douglass, seconded by Councilmember Simonsen and the following roll call vote: Councilmember Conrad, "abstain", Councilmember Simonsen, "yes", Councilmember Douglass, "yes", Deputy Mayor Lare, "yes", Mayor Beck "yes".

- Res. #2011-255 Approval of Change Order No. 3 for the Roof Replacement and Related Work at the Recreation Center.

Mayor Beck opened the meeting for public comment on the resolution.

Joe Winters of Florida Ave asked if the glass was included in the original bid.

Manager Voll replied yes and said the skylights had been delivered yesterday.

Mr. Winters questioned the "capping" and why was rubber placed over metal capping?

Steve Morey from Hatch Mott MacDonald asked for Mr. Winters to put his questions in writing and he would give them to the architect who could provide the answers.

Mr. Winters requested the Resolution not be approved at the present time and that the contract be followed as per spec.

Manager Voll replied the contract would be followed as per spec and extension was necessary. He felt the Township should move forward with the extension, noting all the work would have to be certified and the vendor would not get a payment until the certification was done.

Mayor Beck closed the public portion.

The resolution was approved on motion by Councilmember Conrad, seconded by Councilmember Douglass and the following roll call vote: Councilmember Conrad, "yes", Councilmember Simonsen, "yes", Councilmember Douglass, "yes", Deputy Mayor Lare, "yes", Mayor Beck "yes".

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Ord. #2011-15. An Ordinance Amending Chapter Seven Entitled "Traffic" of the Code of the Township of Lower, 2nd rdg. (Ordinance would prohibit parking on both sides of Seashore Road Beginning at the point 725 feet north of Tabernacle and continue 765 feet northerly therefrom - the area of the curve near Sunset Towing & S & E Auto Repair)

The Clerk announced the ordinance notice had been published and posted according to law and copies had been made available to the public.

Mayor Beck opened the meeting to the public for comments on Ordinance #2011-15.

There was no public comment.

The Ordinance was approved on motion by Councilmember Simonsen, seconded by Councilmember Conrad and the following roll call vote: Councilmember Conrad, "yes", Councilmember Simonsen, "yes", Councilmember Douglass, "yes", Deputy Mayor Lare, "yes", Mayor Beck "yes"

Ord. #2011-16. An Ordinance Authorizing Execution of a Conveyance by Quit Claim Deed of Certain Potential Property Interests to the Lower Township Rescue Squad in Connection With Providing Emergency First Aid Services to the Township of Lower, 2nd rdg. (This ordinance allows for execution of a quit claim deed of certain land & conveying any Township interest to the Lower Twp. Rescue Squad to be used in connection with the provision of emergency first aid service to the citizens of the township.

The Clerk announced the ordinance notice had been published and posted according to law and copies had been made available to the public.

Mayor Beck opened the meeting to the public for comments on Ordinance #2011-16.

Joseph Boyle of Arizona Ave thanked the Emergency Personnel for the response during the Hurricane.

Mayor Beck closed the public portion.

The Ordinance was approved on motion of Councilmember Douglass, seconded by Councilmember Simonsen and the following roll call vote: Councilmember Conrad, "abstain", Councilmember Simonsen, "yes", Councilmember Douglass, "yes", Deputy Mayor Lare, "yes", Mayor Beck "yes".

Council Comments

Councilmember Conrad thanked all the emergency service workers, Public Works, Fire Companies, Police, Rescue, Volunteers, Animal Control, Anco and Acme for all their help and efforts during Hurricane Irene. He said OEM did a great job. He announced on Sept 28th or 30th Lower Township would be having a Flu Clinic at Township Hall. There would be a small cost and more information to follow.

Councilman Conrad stated that he would like to re-visit the contract negotiation discussion.

Councilmember Simonsen reiterated the praise for the emergency service response during the course of the storm.

Councilmember Douglass also thanked everyone for the response to the storm and stated he received so many comments regarding the great job everyone had done.

Deputy Mayor Lare also thanked all the first responders, Public Works, The Township Manager and OEM Coordinator for a job well done. He also thanked Council for the support for the new hockey surface at Douglass Park and said it would be installed with volunteer labor under the supervision of the manufacturer. He noted it would provide a first class hockey surface that will last a minimum of 10 years.

Deputy Mayor Lare stated when the contract process was discussed at the last meeting, the Solicitor stated the unions should be notified. He said It was imperative the council hear all sides and gather as much input as possible prior to making decisions.

Mayor Beck stated the Township was really spared by the storm and Rich Harron, Chief Marker, Gary Douglass and Gary Playford were all instrumental in the success through the storm. He mentioned a 9/11 ceremony would be held on Sunday at 6:00 pm on Sunset Beach and the Fishing Creek School would have a fundraiser on October 2nd from 4-7 pm; tickets would be \$25.00 per person.

Eileen Kreis spoke on the Run For The Fallen and the upcoming events to support the cause.

Public Comments

Hockey Rink

Stig Blomkvist of Mickels Run addressed Council and thanked them for supporting the Hockey Rink resurfacing and thanked all the volunteers who would be helping in the resurfacing.

Reverse 911 System

Bob Walter of West Florida Ave addressed Council and questioned who was responsible for the 911 reverse system and how do we include residents who were not called? Manager Voll replied that everyone who had a "hard line" in their house should already be included. Anyone with a cell phone should go onto our website under global connect and register.

Walkway Between Township Hall & Library

Mr. Walter also requested a pedestrian walkway between the Township building and the library. He also felt he did not feel a left hand turn should be permitted upon exiting the front parking lot on Bayshore Road. Public Works Director Douglass replied the Township engineers had approved all site angles and county guide lines for the exit. He said the County would stripe the road as soon as they got a chance.

Airport Security

Wayne Weissman from Beachwood Ave addressed Council and questioned if any additional security would be in place at the County Airport for 9/11 and requested all residents fly their flag on September 11th.

Contract Negotiations

Thom Will of North Cape May addressed Council as the Union Representative and a taxpayer to reiterate the union's position on opening up contracts to the public. He stated the unions were against it. He said there was a lot of support at the meeting against opening up the contract to five people. Those five people did not represent the taxpayers of the Township. After a lively discussion, Mayor Beck replied the taxpayers paid the bills and were entitled to see the contracts prior to being passed.

Sue Bailey from Oak Lane addressed Council and stated she was a non-union Township employee and a taxpayer. She stated the taxpayers elect the Council and Mayor to represent them and make decisions for their best interest. She stated it was ridiculous to allow people to view something so sensitive. The taxpayers put their faith in the elected officials and they need to vote on it. After it was voted on, yes, show the people but to open it up during negotiations was wrong.

Bud Bailey, Teamsters Representative, stated getting the public involved prior to the final vote was letting a third party into negotiations.

Mayor Beck stated by a referendum the taxpayers could stop the contract, but by resolution they could not.

Mr. Bailey stated if a third party made any decision which influenced Council's decision and changed things, there would be an unfair labor practice filed.

John Skowronski from 607 Arctic Ave. addressed Council and stated he believed contracts should be made public. He stated we were a free Country and we should be able to see all that went on.

Deputy Mayor Lare stated that every contract that had been ratified was online at the Township's website. He said the conversation was about process, not about open government. He said every contract in the Township was available online and no other community or State could say that. Deputy Mayor Lare quoted the Solicitor from the prior meeting regarding keeping a third party out of negotiations.

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Debbie Johns addressed Council and stated the point was no one had a problem with the public seeing the contracts they were online now. Everyone had an opinion on the contracts, but if the union sat and negotiated in good faith, the union should not have to rely on the governing body keeping their word (to ratify) once the proposed contracts were opened to the public.

After a lively discussion, Mayor Beck replied this was something that had been coming for a long time and he had been out in front the entire time about it and believed where they were now was the best possible solution.

Councilmember Douglass stated from the Solicitor's information, the Open Public Meetings Act contained a specific exception for collective bargaining negotiations and it actually went a step further to allow the negotiation committee into a closed session. The Legislature had carved out specific exceptions for negotiations. In the legal interpretation you find a strong legislative intent to provide confidentiality for negotiation. "I will go on record that I oppose the contract going to the public prior to the vote."

Councilmember Simonsen questioned the Solicitor as to whether it was allowed for a third party to be involved if both parties agreed.

Solicitor Donohue replied in arbitration and mediation, it could be permitted if it was expert on a specific subject matter. Other than an expert, it would be extremely unusual to invite a third party into collective bargaining.

Brian McEwing of Townbank Road addressed Council and stated he had been on both sides of contract negotiations and allowing anything or anyone else into the negotiations would muddy the waters and break down the trust. If anyone didn't like what Council did with a contract, they needed to vote in/out the councilmember.

John Skowronski, of 607 Arctic Ave addressed Council and stated the senior citizens were on limited income and had to pay what Council agreed to, indicating his support for public review before the final vote.

Gayle Crookston of North Cape May addressed Council and stated she understood what Council wanted to do, but everyone could go online and look at the contracts. Nothing was changed in the contracts except for a number here or there. She said anyone could go and look now and then offer their suggestions to Council prior to the negotiations being started. She stated they were putting their faith in Council that if by resolution they provided access to the negotiated contracts and the public opposed, they would not be swayed.

Councilmember Conrad said he would like to put the topic to rest and by offering a motion.

Solicitor Donohue said motions should be made in the affirmative and suggested how the motion should be made.

Councilmember Conrad made a motion, seconded by Deputy Mayor Lare To Release The Proposed Collective Bargaining Units Contracts to the Public Prior To Final Approval By The Governing Body. The motion was reduced to writing and added as Resolution #2011-257.

The following roll call vote was taken: Councilmember Conrad: "no", Councilmember Simonsen "abstain", Councilmember Douglass "no", Councilmember Simonsen "abstain", Councilmember Douglass "no", Deputy Mayor Lare "no", Mayor Beck "yes". Motion defeated.

There was no further public comment.

Res. #2011-258, A Resolution Providing for a Meeting Not Open to the Public in Accordance with the Provisions of the Provisions of the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-12 (Acquisition of property)

Councilmember Douglass motioned to adopt the resolution, seconded by Councilmember Simonsen.

The resolution was adopted by the following roll call vote: Councilmember Conrad, "yes", Councilmember Simonsen, "yes", Councilmember Douglass, "yes", Deputy Mayor Lare, "yes", Mayor Beck "yes".

Council returned from open session and there being no further comment, Councilmember Douglass motioned to adjourn the meeting, seconded by Councilmember Simonsen. The meeting unanimously adjourned by verbal "ayes" at 9:10 p.m.


Mayor

Approved:


Township Clerk

PERSONNEL ACTIONS

Report for Council Meeting of 09/07/11

<u>Department</u>	<u>Name</u>	<u>Eff. Date</u>	<u>Replaces</u>	<u>Action</u>	<u>Title</u>	<u>Budgeted Item</u>
Public Safety	Keywood, Thomas	9/1/11		retired	Police Lt	yes
Public Safety	Biersbach, Martin	9/1/11	Keywood, Thomas	promotion	Police Lt	yes
Public Safety	Beeby, Thomas	9/1/11	Mastriana, William	promotion	Police Lt	yes
Public Safety	Mastriana, William	9/1/11	Marker, Brian	promotion	Police Capt.	yes
Public Safety	Macomber, Ernest	9/1/11	Biersbach, Martin	promotion	Police Sgt.	yes
Public Safety	Greene, Patrick	9/1/11	Beeby, Thomas	promotion	Police Sgt.	yes
Public Safety	Gamble, Matthew	8/29/11	Greene, Patrick	new hire	Police Officer	yes
Public Safety	Greto, Anthony	8/29/11	Macomber, Ernest	new hire	Police Officer	yes
Manager	McPherson, Kathleen	9/1/11		retired	Personnel Officer	yes

Date of report: 9/2/11

c: Manager
Clerk
Payroll
Asst. Treasurer
Personnel Director
Bulletin Board
File