

## Regular & Work Session Meeting Minutes - July 6, 2011

The regular meeting of the Township Council of the Township of Lower, County of Cape May, State of New Jersey was held on July 6, 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 Asst. Clerk Horwath

### Fireworks Appreciation Certificates

Mayor Beck said it was a great fireworks show. He said a lot of the credit went to the Deputy Mayor and those who contributed toward the fireworks. He said they couldn't have put on such a nice show without the generosity of those who donated and the Township was grateful for that.

Deputy Mayor Lare said the Township had lost the funding from the DRBA for the fireworks. He starting to call people and they were more than willing to help. He said last year they raised about \$23,000.00 and this year they would have raised over \$31,000.00. He said the feedback from the fireworks was great.

Council handed out certificates to those who contributed toward the fireworks.

### Oath of Office - Chief Brian Marker

Mayor Beck said many were present to see Brian Marker take his Oath of Office as Chief of Police. He said he was happy to see him move up. He said Brian had started out at the age of 13 as a Police Explorer. He read a list of Brian's positions in the department and his accomplishments. He said his father was a retired Police Officer. He said there was a large crowd in attendance as well as the County Prosecutor and the Sheriff. Judge Hillegas administered the Oath of Office.

Mayor Beck said Council knew he would do a good job and his heart was with Lower Township.

Mayor Beck asked Brian if he wanted to say a few words.

Brian said Lower Township and the Lower Township Police Department was something he cared about very much. He said there were many blessings bestowed upon him due to his involvement with the police department and God. He thanked the Mayor and Council for their support in appointing him as the Police Chief. He said there were a lot of people present who helped mold him to who he was today. He said something he and the community would be doing together was policing the Township. He felt it was important to work together for a safe community.

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### Review of Consent and Regular Agenda Items

Councilmember Conrad asked the minutes be moved to the regular agenda.

Deputy Mayor Lare asked the bond ordinance be tabled because the Cox Hall Creek project was about to start and the County may approach the Township for part of the funding to make the project happen. He asked if the Manager could reach out to the County before the next meeting about it.

Manager Voll said he spoke to the Engineer and asked him to contact Steve O'Connor from the County and set up a meeting next week.

Deputy Mayor Lare motioned to table Ord. #2011-14, seconded by Councilmember Conrad. The ordinance was tabled by the following roll call vote: Councilmember Conrad, "yes", Councilmember Simonsen, "yes",

Councilmember Douglass, "yes", Deputy Mayor Lare, "yes", Mayor Beck, "yes".

Mayor Beck asked Manager Voll what two vehicles were being replaced for \$26,000.00.

Manager Voll said they were down sizing high mileage 4 wheel drive vehicles that used a lot of gas to Ford Focuses which got 28 miles a gallon.

Councilmember Simonsen questioned Resolution #2011-194, the ADA grant application. He asked if it was just for existing projects.

Manager Voll said it was a competitive application and if Mr. Blauer succeeded in getting the application he would receive his fee and it would be for projects in the future.

### Public Questions on Consent Agenda and/or Regular Agenda Items

No comments

### Consent Agenda

Approval of Minutes	June 20, 2011
Res. #2011-184,	Payment of Vouchers, \$1,510,057.99
Res. #2011-185,	Certification to Local Finance Board of Receipt and Review of Audit Sections General Comments & Recommendations (Annual required resolution after receipt of Township audit)
Res. #2011-186,	A Resolution Requesting Release of Demolition Bond for Block 215, Lot 34, 32 Ohio Avenue, Villas (work completed)
Res. #2011-187,	Authorization to Cancel Uncashed Checks (8 checks totaling \$72.09)
Res. #2011-188,	Resolution Amending Capital Budget (Lauren)
Res. #2011-189,	Over the Limit Under Arrest 2011 Statewide Crackdown Grant (Annual grant )
Res. #2011-190,	Approval of Change Order No. 1 for Roof Replacement and Related Work at the Recreation Center, Contract M-5
Res. #2011-191,	Authorizing Payout of Terminal Leave (E. Donohue, Chief, retirement)
Res. #2011-192,	Authorizing Payout of Terminal Leave (D. Crawford, Dispatcher retirement)
Res. #2011-193,	Resolution Renewing Liquor License for Cape May Two Brothers, Inc. (Annual renewal)
Res. #2011-194,	Public Facilities Grant Application for \$500,000, Various ADA Improvements
Res. #2011-195,	Authorizing A Professional Contract with Blauer Associates, Inc. (Small Cities CDBG app.)
Res. #2011-196,	Authorization for Refund of Taxes (1 duplicate payment)
Ord. #2011-13,	Ordinance Appropriating \$26,142 From the Capital Surplus Fund for the

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Ord. #2011-14, Acquisition of Two Vehicles, 1<sup>st</sup> rdg. (2<sup>nd</sup> rdg. August 1, 2011)  
Bond Ordinance Providing for Various Capital Improvements of the Township of Lower, in the County of Cape May, New Jersey, Appropriating the Aggregate Amount of \$440,000 Therefor and Authorizing the Issuance of \$400,000 Bonds or Notes of the Township to Finance Part of the Cost Thereof, 1<sup>st</sup> rdg. (2<sup>nd</sup> rdg & public hearing August 1<sup>st</sup>) **TABLED**

Councilmember Douglass motioned to adopt the consent agenda, seconded by Councilmember Simonsen. The consent agenda was adopted by the following rolling call vote: Councilmember Conrad, "yes", Councilmember Simonsen, "yes", Councilmember Douglass, "yes", Deputy Mayor Lare, "yes", Mayor Beck, "yes".

Regular Agenda

Approval of Minutes of June 20, 2011.

Councilmember Douglass motioned to adopt the minutes, seconded by Deputy Mayor Lare. The minutes were approved by the following roll call vote: Councilmember Conrad, "abstain"  
Councilmember Simonsen, "yes", Councilmember Douglass, "yes", Deputy Mayor Lare, "yes", Mayor Beck, "yes".

Ord. #2011-11, An Ordinance Authorizing Execution of a Lease of Certain Property for Use by the Lower Township Rescue Squad in Connection with Providing Emergency First Aid Services to the Township of Lower, Public Hearing (Renewal of 10 year lease for Rescue Squad office at Public Safety Complex)

Mayor Beck opened the meeting for comment on the ordinance.

Solicitor Donohue said there was a typographical error in the ordinance it should read 40A:12 -14.

Mayor Beck questioned the lease and the paragraph which referenced the 18 month notice; why was the phrase in there about public safety.

Solicitor Donohue said it came from a meeting he had with their attorney, Frank Corrado and a few emails that were exchanged.

Mayor Beck said his concern was that it just didn't say " would no longer use the property that was the subject of the lease".

Solicitor Donohue said part of it was if the Township wanted to use the property for something else, it would increase the Township's ability to use the building for other things instead of walking away.

Bob Weber of Villas asked the logic behind a ten year lease?

Mayor Beck said they could go back to the history of the building and it needed people in there. He said it was a sense of continuity for the Rescue Squad to know where they would be and there was an 18 month escape clause in the lease. He said there were a lot of issue with the building that had to be addressed.

Mr. Weber said when Mr. Corrado was at a prior meeting he stated that the Rescue Squad articles of incorporation had changed. He asked if anyone saw the documents the attorney had spoke of and were they allowed to charge for services?

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Solicitor Donohue said he didn't know maybe someone from the Rescue Squad knew.

Mayor Beck said the lease specified they had to be licensed at the State, if there was a problem with the charter the State could step in.

Mr. Weber questioned the \$97,000.00 that was spent on electric for the building and how much of that was for the Rescue Squad?

Manager Voll said about \$7,000.00.

Mr. Weber said he felt it was more since they were the biggest outfit there and why didn't they have a separate electric meter.

Manager Voll said the Township inherited the building the way it was set up. If the Township had to provide rescue services it would cost more if they were on the payroll.

Mr. Weber said the people should know what it cost.

Maureen Cerrato of 2 Cardinal Avenue asked if the Township owned any of the Rescue Squad vehicles?

Manager Voll said "no".

Mrs. Cerrato asked why did three of the vehicles have municipal tags and she read the plate numbers.

Councilmember Simonsen asked if the vehicles were at the public safety building.

Mrs. Cerrato said they were at the building at Main and Georgia Avenues.

Joe Winters of Villas said Section 9 of the lease read the Rescue Squad was to pay all utilities. He asked if the Township paid for their gas?

Manager Voll said they paid for their own gas for the vehicles.

Ed Butler said in the lease there was a provision that said they were the only one recognized as sole provider of services and that didn't allow for any competition.

Mayor Beck said it referred to the resolution adopted at the reorganization meeting which appointed them for one year to provide emergency medical services. He said if they didn't adopt the resolution the next year the lease would not apply.

Solicitor Donohue said there were statutes listed what organizations qualified. He said those statutes had been around for a long time to recognize those specific corporations that were incorporated for that purpose and that was how they became the provider. He said a municipality had two options and that was to have volunteers or paid people.

Mr. Butler said he had nothing against the Rescue Squad but there were other organizations out there qualified. He said there were other organizations that had paramedics on hand.

Manager Voll said the Rescue Squad did have qualified EMT's. He said Atlantic Care responded to any respiratory emergency or critical based call anywhere in the County.

Councilmember Douglass said nothing had changed over the years. He said the Paramedics were based out of the hospital and were called to assist on some calls.

Tony Kapurelos said mentioned the qualifications and the lease agreement of the Rescue Squad. He said he would be happy to speak with anyone regarding the laws that governed the Rescue Squad.

Mayor Beck closed the public portion.

Councilmember Douglass motioned to adopt the ordinance, seconded by Deputy Mayor Lare. The

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

### Administrative Reports

May Report - CFO

### Council Comments

Councilmember Conrad thanked everyone involved with the fireworks and they did a great job. He said the Farmers Market would be held on Friday.

Councilmember Simonsen seconded Councilmember Conrad's comments on the fireworks. He said kudos to those who helped. He congratulated Chief Marker and wished him good luck and looked to moving forward with the police department.

Councilmember Douglass said it was an outstanding event and everyone pulled together. He thanked the residents along the beachfront who decorated their homes and helped out. He had walked the beachfront and spoke to the residents and heard comments that they were the best fireworks they had seen. He congratulated Brian Marker and welcomed him as the new Chief and said he was all about the community.

Deputy Mayor Lare also thanked those involved with the fireworks. He said a few words about Brian Marker of how he worked his way up the ranks and looked forward to working with him. He wanted to clarify some things and that was he had no problem with the Rescue Squad and felt they were a bargain to the residents and he never heard any complaints about them.

Mayor Beck asked Brian why he was still at the meeting when he had a party to attend. He said a few words about Brian starting at the age of 13 as a Police Explorer and now he was the Chief of Police. He said the fireworks were great; the people came out and enjoyed themselves and left happy. He mentioned the Farmers Market was on Friday and the Whale of a Day was Saturday.

### Call to the Public

Fred Long of Cold Spring said he had a few comments on the OPMA and Council's response to the Prosecutors letter of June 9<sup>th</sup>. He said the Township website had the Teamster's Contract on there but the process wasn't followed regarding the PBA Contract. He said no informed public comment could be made regarding the resolutions #179 and 182 (closed session and PBA ratification which was removed from the prior meeting).

Mr. Long reviewed the OPMA process. He read a portion of the Prosecutor's letter stating that guidelines needed to be drafted regarding the use of emails between Council. He suggested to post on the Township website final drafts of contracts before they were approved by Council. He said to follow the wording in the OPMA for closed session resolutions regarding disclosure of the discussion. He asked for Council's comments on his suggestions.

Mayor Beck said there wasn't any argument with the closed session resolution wording.

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Solicitor Donohue said they could tightening up the wording but it was a pretty good resolution compared to others he had seen.

Mayor Beck said he agreed with Mr. Long that the final draft of contracts should be on the website so the public had an opportunity to view them. He said the public paid the bills and had a right to see the contract before they were voted on.

Solicitor Donohue said Attorney Blaney said a problem may arise at the end of negotiations that had been gone on for some time and the union developed some expectation that would be the form of the contract. He said to have the contract opened to the public and possible suggestions of changes to the contract the union may have a legal basis for a grievance. He said it may be something they want to bring up in discussions with the unions. He said it was a policy question that had potential to be a legal question if it wasn't handled properly.

Councilmember Conrad said weren't they elected to represent the people.

Deputy Mayor Lare said they were a republic and there to represent the people. He had no problem with the contracts on line prior to the meeting; He said to give open dialogue to change the content of a contract was why people went to the election box for to vote people out who didn't offer good contracts.

Mayor Beck said he felt the people had the right to see them prior to Council's action.

A brief discussion ensued on the posting of contracts online.

Jack Sparks said it was a republic and if a contract was open to the floor; when it went back to the PBA it wouldn't be the same.

Mayor Beck said it had been done recently and they didn't hear a word.

Mr. Sparks said it wasn't the PBA.

Colleen Hughes of Idaho Avenue said it was a disgrace what happened 2 ½ years ago when the contract was passed, they gave away the store. She said she wasn't happy how things were going. She also asked about the Chamber of Commerce and the flags that were supposed be along Bayshore Road.

Mayor Beck said it shouldn't be too much longer, the Chamber had been in touch with the electric company about the flags.

Thom Will, President of AFSCME said they were talking about putting the contract online and putting it out to the public. He said he hoped what had been negotiated and agreed to by the unions and Township would not be subject to public input and change.

Mayor Beck felt putting the contracts online gave the public a chance to view them. He said he would not change his mind on something agreed to unless some of the language was wrong.

Deputy Mayor Lare said the PBA voted on the contract the same day as the council meeting so they weren't able to post it online. He said the Auditor and Attorney were present to discuss the cost of the contract to the Township and it would have been a landmark change.

Mayor Beck questioned why it had to be on the agenda the same evening.

Deputy Mayor Lare said there was pending legislation by the State.

Mayor Beck felt the contracts should be online with the agenda once an agreement had been reached

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with the unions.

Solicitor Donohue said the contracts would have been negotiated only with the representatives legally at negotiations. He said 3<sup>rd</sup> parties couldn't be at the bargaining table.

Mayor Beck said it had to be voted on in public; when a motion was made could public comment be made?

Solicitor Donohue said it wasn't legally required to do that. He wanted to be clear he wasn't saying they couldn't do it, there were potential legal pitfalls that they wanted to avoid if they did it.

Mayor Beck asked the Solicitor to do some research on it.

David Brand, former Councilman said he didn't have a problem with the public seeing the contract; but the public should not have time to discuss the parameters of the contract.

Mayor Beck said it had been done before.

A discussion ensued on the matter of the public having comment on the contracts. Mr. Brand said his problem was allowing the public to have comment before a vote.

Mayor Beck said the Teamsters and AFSCME extensions were online.

Mr. Brand said it should never be opened to the public to tear it apart.

Debbie Johns, AFSCME Asst. Shop Steward said once a contract was tentatively agreed upon she didn't feel the public should have the right to sway what was agreed upon. She said if the public wanted to comment she hoped Council would represent those they negotiated with and when it came time to vote they would agree. The public had the right to comment but it wouldn't change their opinion or the agreement otherwise what was the point to collective bargaining.

Solicitor Donohue said it was required that every meeting have public portion. He said the term "straw vote" everyone uses in the closed session. He said no vote was taken in closed session.

Mayor Beck said no formal vote was taken they took a consensus vote.

Solicitor Donohue said it was the use of the word "vote" was what could get them in trouble.

Mayor Beck said they voted in open session with public comment.

Ed McKinstry of 15 Alabama Avenue said since the lot was cleared on Cardinal Avenue motorcycles and trucks were now cutting through the property.

Councilmember Douglass asked if the Rescue Squad was under any restrictions for doing work to the property.

Tony Kapurelos said they were not and they were going to start working on it soon.

A resident asked her representative Councilmember Conrad a question regarding the lot on Cardinal Avenue. She said the Rescue Squad had been granted certification to work on the land. The residents were waiting to see the correct procedure to follow.

Solicitor Donohue had advised Councilmember Conrad not to comment on the Rescue Squad.

The resident asked when the clean up would begin on the lot.

Mayor Beck said Mr. Kapurelos said they would be starting this week.

Deputy Mayor Lare asked if they would be building homes there?

Mr. Kapurelos said they were clearing it and parking cars there also landscaping and putting up a fence.

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Deputy Mayor Lare asked why wouldn't the Rescue Squad sell the lots for residential use.

Mr. Kapurelos said they were a business and they use their property for business interest. He said as far as vehicles went, it went back to the 70's and they were not required to change tags once they weren't affiliated with the Township. He said as far as Councilmember Conrad abstaining, they did have representation because when they voted they voted for a Mayor and Deputy Mayor so they did have representation.

Mr. Weber said the Rescue Squad had plans of putting in a parking lot. He said they had maintained all along they were not doing that. He said they had applied to Cape Atlantic Soil Conservation and received clearance and now they want to put in a gravel parking lot to park commercial vehicles. Councilmember Douglass said if the Rescue Squad wanted to change use it would have to go before the Zoning and Planning Board.

Deputy Mayor Lare said what it was zoned for they were allowed to do. He said anything outside the existing zoning then they would have to get a variance like anyone else.

Councilmember Douglass said if they needed a variance they had to obtain then people would have a chance to speak.

Mr. Weber had no faith in what the Rescue Squad said to be true.

### Prosecutor's Letter

Joe Winters asked if in the closed session would there be an answer regarding the Prosecutor's letter. Solicitor Donohue said they would have a reply to the Prosecutor that would be approved by Council and then made public.

### Rescue Squad - Lot

Colleen Hughes of the Rescue Squad said she wanted to address what Mr. Weber had said. She said at a meeting the Mayor and Manager were present and she clearly stated a parking lot would be there and asked the Mayor if he heard that.

Mayor Beck said yes he did; prior to that it was said it was cleared because of juveniles there.

Ms. Hughes said there wasn't one commercial vehicle on the Rescue Squad. She thanked the Mayor and Council for the letter in the papers for the food bank the outpouring was great. She said the food was distributed to various food banks in the Township. She thanks a neighbor Mr. Ludlam for catching someone putting trash in the Rescue Squad dumpster.

### Citizen's Advisory Board

Janet Pitts of Villas asked the Manager when and where the June meeting was advertised.

Manager Voll said it was an oversight of the Chairman of the CAB.

The Clerk said it had been sent to the Star and Wave for advertisement of the meetings.

Mrs. Pitts said they had to have the Citizens Advisory Board to give them representation they didn't have. She said the board met in May and June and no appointments had been mentioned. She said representation was four out of ten were republican committee people and there were no democratic committee people. She said if they checked there were none on the Mayor's Advisory Board. She

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said they were keeping the names very secretative and disappointed. She didn't feel they had the sunshine law in Lower Township.

Ed. Butler said he wanted to bring up an incident that happened on July 1<sup>st</sup> on the dunes near his home. He wanted to thank the police and fire company for their assistance.

Union Contracts

Mr. Butler said as far as the contract people had the right to know what was going on. He said the union officials kept their members informed. He said the public should be kept informed.

Mayor Beck closed the public portion.

Deputy Mayor Lare said Council needed to address how many time a person could approach the microphone. He said a standard should be established to run the meeting and follow it.

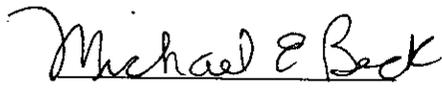
Resolution #2011-197, Resolution Providing for a Meeting Not Open to the Public in Accordance with the Provisions of the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-12." (Attorney Client Privilege)

Councilmember Lare motioned to adopt the resolution, seconded by Councilmember Douglass. 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".

Councilmember Douglass motioned to return to open session seconded by Councilmember Lare. The motion carried by verbal "ayes".

Deputy Mayor Lare motioned to authorize the Solicitor to finalize a memo regarding the Prosecutor's letter about emails, seconded by Councilmember Douglass the motioned carried by verbal "ayes".

Councilmember Douglass motioned to adjourn the meeting, seconded by Councilmember Conrad the meeting unanimously adjourned by verbal "ayes" at 9:40 p.m.

  
Mayor

  
Township Clerk

Approved: July 18, 2011