

Regular & Work Session Meeting Minutes -March 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 March 7, 2011 at 6:00 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
Deputy Mayor Kevin Lare
Mayor Michael Beck

Also present: Michael Donohue, Solicitor, Michael Voll, Manager and Asst. Clerk Horwath

Absent: Councilmember Douglass

Budget Work Session Review

Mayor Beck thanked Leon Costello, Auditor and Lauren Read, CFO for being present for the budget review and appreciated all their hard work on the budget.

Mr. Costello said it was the budget introduction and they needed three votes to introduce it. He said the public hearing would be on April 4th and at that time any line item that could be changed. He noted if anything were changed by more than 10% it Council would not be able to adopt that night. If it was less than 10% it could be amended and adopted that night. The Auditor noted the Township didn't lose any State Aid; they would receive the same amount as last year. He said the proposed budget had a 1.7% tax increase which was a 4.1% increase in the levy. He said the budget met the levy CAP and was under by \$150,000.00 leaving plenty of room to spend as long as taxes were not increased. Mr. Costello said the Township had declining revenues the last few years but managed to hold stable for the year 2010 with all allowable fund balance being used in the proposed budget. He said the real increases for this year were the two pensions and health care. Mr. Costello said the 2012 pension numbers were out and there would be an increase of \$160,000 in the pension costs with two reforms on the table. Senator Sweeney had introduced a bill that would require a health care payment of the premium paid by the employees but there had been no action on the bill yet. He said the Governor wanted it phased in over four years and noted there was a pension reform bill to change the calculation to years of service over 60 as compared to the current years of service over 55. The auditor said that would provide some relief in 2013. He said if union contracts were open they would qualify otherwise it would take effect when the contracts expired. Mr. Costello said the Sweeney Bill introduced made it mandatory that five health plans be available, so he was making cheaper plans be part of the system and gave different examples of how the plans would be. Mr. Costello noted there was a small loss in rateables but the collection rate was basically the same as last year. He said the Township needed to watch the tax appeals filed because if an appeal was successful, the loss would be out of the Township's pocket. He said it was a good budget so far and the purpose was to get it on the table and they could make changes. He said between now and April 4th they could meet and discuss the budget but no action could be taken until after the public hearing on April 4th. He said debt service was under control and salaries were down. Mr. Costello mentioned Lower

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Township was in much better shape than other communities such as Atlantic City and Camden where there were massive layoffs just to get their budgets legal for introduction.

Councilmember Conrad said he felt Lauren and Leon had done a wonderful job with the budget.

Councilmember Simonsen also commended them on the good job they had done and said he was happy with it.

Deputy Mayor Lare commended everyone involved in the budget process and but felt they could do better. He said he wouldn't support it with a 1.7 cent increase. His goal was to get it to zero but that wasn't realistic so he would like to see it at a penny.

Mayor Beck said he felt it was a doable item and felt the toolkit was no help at all. He said the only help was \$50,000 on a \$ 25 million-dollar budget. He felt Council achieved stability by seeing the train coming down the tracks a few years ago and through attrition as the Township had 144 employees and now was now down to 129. He added they couldn't keep losing employees.

Mayor Beck opened the meeting for public comment.

Budget

Fred Long of Cold Spring asked Mr. Costello how the amount was for the local purpose tax to be raised.

Mr. Costello said \$18,424,177.72.

Mr. Long asked Mr. Costello what percentage rate was assumed for the reserve for uncollected taxes.

Mr. Costello said 96.53%.

Ed Butler asked how much surplus was used in the proposed budget.

Mr. Costello responded \$1,850,000.00 and the maximum was \$1.9 million.

Mr. Butler said their toolbox should be opened and Council should do what was needed to be done.

Mr. Costello said the schools hadn't come out with their budget yet and the County budget increase was very minimal.

Mayor Beck reminded all the Township had a zero tax increase last year.

Mr. Butler said he was interested in right now and the future.

Frank Serraco, Villas asked Mr. Costello not to raise taxes in any way. He asked Mr. Costello to explain what becoming legal meant?

Mr. Costello said there were two CAPS that had to be met; the 2% tax levy and the 3.5% on spending. The Township was under those caps and so the budget was legal.

Mr. Serraco asked Mr. Costello if he had said other areas where employees were being laid off was not to lower the taxes.

Mr. Costello replied when he mentioned other towns laying off employees, it was so they could get to the 2% levy CAP and 3.5% spending CAP to have a legal budget.

Robert Rizzo asked Council to consider the totality of the situation, the County, Schools and Fire District and said even if taxes went up a little bit it would be a lot for some people.

No further questions, Mayor Beck closed the public comment portion.

WORK SESSION

Request of Timothy Dwyer, Esq. Re: Block 410.01 Lot 71.03 - Encroachment

Mayor Beck asked Solicitor Donohue to explain the encroachment issue.

Solicitor Donohue said in the context of a land use issue the Planning and/or Zoning Boards look to protect the Township. He said an application filed by Corino and Dwyer on behalf of a client for xxx a fence along Greenwood Avenue encroached in the right of way by 2.7 feet. The Solicitor said Township could handle it several different

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ways, the Township could issue a directive to move the fence, but it appeared the fence had been there for about 40 years. He said the attorneys for the applicant were suggesting they would acknowledge the encroachment through an encroachment agreement and record the fact that they weren't going to claim adverse possession against the Township. Solicitor Donohue said the Township could proceed with an agreement or give the applicant notice to move the fence.

Council had no objection to an encroachment agreement.

Solicitor Donohue said he would get in touch with Mr. Dwyer and prepare the necessary document for Council's approval.

Mayor Beck said he was concerned with the potential liability and repair issues on the portions of the fence that encroached onto the Township's property and suggested that be addressed in the agreement.

Solicitor Donohue said the agreement could require that if repairs were made to any part of the fence on the Township's property it would then be moved off Township property.

All agreed.

Request to Amend Increase Class II Officers

Captain Marker said he was representing the Chief. He said the Department had 10 Class II Officers, eight were hired and one was in the academy, however, some of them were being interviewed by the Department of Corrections and other agencies. Captain Marker said the Chief was asking Council to change the ordinance which permitted 10 Class II's to 12 now, so additional officers could be trained for the summer season/ Councilmember Conrad said as long as the Chief understood Class II's were not to be used to replace full time officers.

Deputy Mayor Lare and Mayor Beck were in agreement to change the ordinance to permit 12 Class II officers instead of 10.

All were in agreement with it.

Review of Consent and Regular Agenda Items

No Council Comments.

Public Questions on Consent Agenda and/or Regular Agenda Items

Ed Butler asked what Resolution #2011-84, the contract award was for?

Mayor Beck said it was for fertilizing and maintaining areas of the Bennette's field.

Deputy Mayor Lare said the vendor would oversee the weed, feed and maintenance of the fields and common areas.

Mr. Butler asked if that service was awarded in a previous contract.

Deputy Mayor Lare said it was an annual contract.

Mr. Butler asked if it was a no bid contract.

Deputy Mayor Lare said it had been put out to bid.

Mayor Beck asked Margaret Vitelli the Purchasing Agent to explain.

Mrs. Vitelli said any service or item over \$17,500 was on pay to play requirement which was done with this contract.

She said they included everything so they would have one full contract and there would be no additional applications. She further explained the bid process, advertising on the website and taking phone quotes.

Mayor Beck closed the public portion.

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Consent Agenda

Approval of Minutes	February 23, 2011
Approval	NJ State Fireman s Association Applications - Mark Becica, Joshua Donohue & John R. Kendrick, for Villas Volunteer Fire Co.
Ord. #2011-07,	An Ordinance to Exceed the Municipal Budget Appropriation Limits and To Establish a Cap Bank (N.J.S.A. 40A:4-15.14) (Annual resolution done with budget introduction)
Ord. #2011-08,	An Ordinance Amending Chapter 90, Article II of the Code of the Township, Entitled, Police Department (Permitting increase in Class II officers from 10 to 12) 1 st rdg. (2 nd rdg Mar. 21)
Res. #2011-71,	Payment of Vouchers, \$1,631,235.40
Res. #2011-72,	A Resolution Requesting Release of Demolition Bond for Block 19, Lot 43, 33 East Florida Avenue, Villas, NJ 08251
Res. #2011-73,	Authorization for Payout of Accumulated Compensatory Time (M. Perry - \$5,991.)
Res. #2011-74,	A Resolution Requesting Release of Demolition Bond for Block 221, Lot 21, 244 Maryland Avenue, Villas, NJ 08251 (demolition completed)
Res. #2011-75,	Approval of Holy Spirit Lutheran Church s Application to Conduct a Flea Market on June 11
Res. #2011-76,	Approval of Change Order #1, Maintenance of Grounds & Parks for the 2011 Season (Adding additional township properties to contract for 2011)
Res. #2011-77,	A Resolution of the Township of Lower Approving an Agreement with S. Vitale Pyrotechnic Industries, Inc. to Provide Fireworks Display (\$40,000 for July 3 event)
Res. #2011-78,	Authorization for Payout of Accumulated Compensatory Time (D. Fisher, - \$1,452.78)
Res. #2011-79,	Authorization for Waiver of Fees for St. John of God/St. John Neumann Church (for Minor Site Plan & Building Permit Fee)
Res. #2011-80,	Transfer of Appropriations, \$800 (from gasoline to natural gas)
Res. #2011-81,	Resolution Supporting NJ DOT Recommendation for No Passing Zone on US Route 9 in the Vicinity of Walnut Street
Res. #2011-82,	Authorization for the Township of Lower to Apply for an Emergency Management Agency Assistance Subgrant (Application for \$10,000 Subgrant - \$5,000 Federal Award & \$5,000 Township match)
Res. #2011-83,	Introduction of 2011 Municipal Budget (Public Hearing & Scheduled adoption April 4, 2011)
Res. #2011-84,	Acceptance and Contract Award for 2011 Freeman Douglass Field Maintenance Contract (\$14,250 fields & common areas)

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

Administrative Report

Township Manager s Annual Budget Message was received and accepted.

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Council Comments

Councilmember Simonsen said a good job had been done on the budget so far. He congratulated LCMR High School boys and girls basketball teams who made it to the state play-offs.

Deputy Mayor Lare said the Council approved the vendor for the fireworks to be held on July 3^d and he had the job of fund raising \$25,000 for the fireworks. He said it would be a private - public partnership and worked out well last year. The Councilman said he was aware everyone gave through their tax levy but said if anyone who wanted to donate toward the fireworks it would be appreciated.

Mayor Beck said the Fishing Creek School fund raiser continued and for everyone to stop and buy a pizza at Domino s Pizza in the Villas.

Mayor Beck said the demolition began at Ponder Lodge and the buildings would be down shortly. He mentioned some adjustments were made on the trails.

Call to the Public

Employee Contracts

Bill Greenfield of the Villas asked if there were any employee contracts being negotiated.

Mayor Beck said yes, two contracts had expired.

Mr. Greenfield said if he understood the Auditor correctly any contracts settled before the changes were made on the State level would not be subject to the State s changes.

Mayor Beck said he wasn t sure about that.

Budget

Fred Long said he wanted to make a suggestion regarding the budget, noting Mr. Costello indicated in the calculation used for the reserve for uncollected taxes was based on the same percentage as last year, 96.53 percent. He said last year when the budget was introduced, the 96.53 was an estimate. Mr. Long said the Township wound up with a rate of 96.80%. He said it the change in the rate used to calculate the Reserve for Uncollected Taxes could mean a difference of \$100,000 or so. Mr. Long said perhaps Council would want to consider changing the rate used to reduce the budget a bit more.

No further comments, Mayor Beck closed the public portion.

Closed Session

Res. #2011-85,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." (Personnel) was presented at 6:45 p.m.

Councilmember Conrad 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 , Deputy Mayor Lare, yes , Mayor Beck, yes .

Return to Open Session

Councilmember Conrad made a motion to adjourn the Closed Session and return to the Open Meeting at approximately 7:23 p.m. seconded by Councilman Simonsen.

The motion was approved by the following roll call vote: Councilmember Conrad, yes , Councilmember Simonsen, yes , Deputy Mayor Lare, yes , Mayor Beck, yes .

Comcast of Wildwood, LLC - Application for Renewal of Municipal Consent
Cable Franchise Renewal Hearing Public Hearing

Manager Voll introduced Fred DeAndrea and Barry Taylor from Comcast Cable.

Mr. DeAndrea read the following statement:

My name is Fred DeAndrea and I am the southern New Jersey Director of Government Affairs for Comcast s cable systems. We appreciate the opportunity we have had to provide cable television service to Lower Township.

There are formalities associated with this process that are governed by both federal and state regulations. Comcast began that process by sending written notice to the township on or about October 16, 2008 indicating our intention to seek a renewal of our non-exclusive cable television franchise.

We filed an Application for Renewal of Municipal Consent on or about December 16 2010. That application is available for public examination in the Township Clerk s office.

Today s hearing is another step in the renewal process. No action is required today; this is an opportunity for both the governing body and Comcast to hear from the public. As the company learns your needs and concerns, they will be taken into consideration and addressed as we move forward. I am also available for informal discussions in the same regard.

Your attorney may have already told you that, under federal law, the governing body must base its franchise renewal decision on the answer to four fundamental questions:

1. Has the cable operator substantially complied w/ the material items of the existing franchise and applicable laws?
2. Has the quality of the operator s service, including signal quality, responsiveness to consumer complaints and billing practices, been reasonable in light of community needs?
3. Does the operator have the financial, legal and technical ability to provide the facilities and equipment it is proposing to provide?
4. Is the cable operator s franchise renewal proposal reasonable to meet the future cable related needs of the community, taking into account the cost of meeting such needs?

I would like to take this opportunity to remind the public that rates and channel selection are not subject to the franchise negotiation process, and are not governed by the local community or its governing body under the 1996 Telecommunications Act.

Thank you for your time and attention. We look forward, at the conclusion of this process, to your favorable consideration of our application for renewal. At this time, I join your elected officials and municipal staff in looking forward to hearing any comments by the public.

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Comcast Franchise Renewal - Public Comment

Deputy Mayor Lare apologized for making Mr. DeAndrea and Mr. Barry wait while Council was in closed session. He said his concern was the Public Education Government channel and the commitment of Comcast going forward.

Mr. DeAndrea said there were two access channels and it was something they could talk about through the negotiation process.

Deputy Mayor Lare said once Comcast converted to digital and specific boxes were needed there was limited access in the schools, which in his opinion, prohibited some valuable learning experiences.

Mayor Beck asked what was done in other towns?

Mr. Taylor said a number of boxes were provided to the schools.

Deputy Mayor Lare said he would like to see more boxes provided to the schools.

Mr. Taylor said the purpose of the hearing was to get comments from the public.

Solicitor Donohue said the current consent would expire in September 2011 and the purpose of the hearing was to get the public's comments. He said usually after a franchise renewal there would be a subsequent meeting with a representative of the cable provider and issues and concerns brought up by Council would be addressed the next consent. He said the process was somewhat flexible.

Deputy Mayor Lare said he wanted Council to consider at their next meeting to have some kind of give and take with Comcast.

Comcast representative, Mr. Barry that type of discussion wouldn't take place in public and was considered contract negotiations.

Mayor Beck said that would take place with the Manager and/or Solicitor and perhaps a representative of Council who would discuss their concerns.

Chris Kobik of 16 Freedom Drive - thanked Comcast for their support and service to educational system over the past 20 years. He said the access of the PEG channel was very important. He asked for assurances for ongoing maintenance and support of the internal and external access channel.

Colleen Hughes said she would like to see more local sports programs on the PEG channel and get the kids interested in joining the sports.

Mr. Barry said what was put on the PEG channel was decided by those who ran the PEG channel, Comcast had nothing to do with it.

Frances Montesano of Villas asked if they provided services to families who couldn't afford internet access for children.

Mr. DeAndrea said their representatives could work with them and see if there was a less expensive plan.

No further comments, Mayor Beck closed the public hearing for Comcast's Application for Municipal Consent.

There being no further comment, Deputy Mayor Lare motioned to adjourn the meeting, seconded by Councilmember Conrad the meeting was unanimously adjourned by verbal ayes at 7:40 p.m.

Mayor

Township Clerk

Approved: March 21, 2011