

Regular & Work Session Meeting Minutes - March 19, 2007

The regular meeting of the Township Council of the Township of Lower, County of Cape May, State of New Jersey was held on March 19, 2007 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 Wayne Mazurek
Councilmember Glenn Douglass
Councilmember Robert Nolan
Mayor Walter Craig

Also present: Solicitor Paul Baldini and Manager Jackson

WORK SESSION

Certificate of Recognition - Lower Township Recreation Department's Junior Wrestling Team

Mayor Craig congratulated the Junior Wrestling Team and mentioned it was grades 2-6 and spoke of some of their accomplishments. He presented the coaches with certificates.

Review of Consent and Regular Agenda Items

Mayor Craig requested Resolution #2007-88 (A Resolution Requesting that Cape May County include Certain Parcels of Land in the County WQMP (208) Sewerability Plan) be removed from the agenda.

CONSENT AGENDA

- Approval of Minutes March 5, 2007
1. Application Approval NJ State Firemen's Assoc. - Bryan E. Harron, Kevin T. Kelly-Pallanta & Matthew Mastalski - Villas Volunteer Fire Co. and David B. Macomber - Townbank Volunteer Fire Co.
 2. Resolution #2007-76, Approval of Vouchers, \$ 2,699,715.11
 3. Resolution #2007-77, A Resolution Requesting Release of Demolition Bond For Block 773, Lot 7; 818 Onondago Avenue, Cape May, NJ 08204
 4. Resolution #2007-78, Resolution Designating May 3 - 6 As Make A Wish Weekend, Cape May County
 5. Resolution #2007-79, Appointment of JIF Risk Management Consultant (B. Weigand)
 6. Resolution #2007-80, Approval for Roadside Solicitation By Villas Volunteer Fire Company, Inc.
 7. Resolution #2007-81, Authorization for Refund of Taxes

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8. Resolution #2007-82, Resolution Endorsing Submission of Recycling Tonnage Grant
9. Resolution #2007-83, Approval of 2007 Rotary Towing Licenses for Just In Time Towing and Eddie's Auto Body
10. Resolution #2007-84, Acceptance and Award of for Digital Video and/or Recording Security System, Management, Remote Transmission & and Operator Review System
11. Resolution #2007-85, Resolution Approving a Taxi & Operator's License for 2007 for Off Shore Taxi Company
12. Resolution #2007-86, Transfer of Appropriations, \$73,000
13. Ordinance #2007-10, An Ordinance Amending Chapter 512, Entitled "Raffles" of the Code of the Township of Lower, 1st rdg. (2nd rdg. April 2)

Councilmember Douglass motioned to adopt the consent agenda items #1-13, seconded by Councilmember Nolan. The consent agenda was adopted by the following roll call vote: Councilmember Conrad, "yes", Councilmember Mazurek, "yes", Councilmember Douglass, "yes", Councilmember Nolan, "yes", Mayor Craig, "yes".

REGULAR AGENDA

Resolution #2007-87, A Resolution Authorizing 1st Draw Payment on Expenses to the Lower Township Rescue

Squad in the amount of \$10,000.00

Councilmember Mazurek motioned to adopt the resolution, seconded by Councilmember Douglass. The resolution was adopted by the following roll call vote: Councilmember Conrad, "abstain", Councilmember Mazurek, "yes", Councilmember Douglass, "yes", Councilmember Nolan, "yes", Mayor Craig, "yes".

Ordinance #2007-03, An Ordinance Amending Section 235 "Construction Codes, Uniform" of the Code Book of

the Township Of Lower, was presented for second reading and final adoption. The Clerk announced the ordinance was posted and published according to law and copies were available in the Clerk's Office.

Mayor Craig opened the meeting for comment on the ordinance.

There were no comments from the public.

Councilmember Nolan motioned to adopt the ordinance, seconded by Councilmember Douglass. The ordinance was adopted by the following roll call vote: Councilmember Conrad, "yes", Councilmember Mazurek, "yes", Councilmember Douglass, "yes", Councilmember Nolan, "yes", Mayor Craig, "yes".

Ordinance #2007-04, An Ordinance Amending Chapter 340, Entitled "Fire Prevention" of The Code Book of

The Township of Lower, was presented for second reading and final adoption. The Clerk announced the ordinance was posted and published according to law and copies were available in the Clerk's Office.

Mayor Craig opened the meeting for comment on the ordinance.

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There were no comments from the public.

Councilmember Nolan motioned to adopt the ordinance, seconded by Councilmember Craig. The ordinance was adopted by the following roll call vote: Councilmember Conrad, "yes", Councilmember Mazurek, "yes", Councilmember Douglass, "yes", Councilmember Nolan, "yes", Mayor Craig, "yes".

Ordinance #2007-05, An Ordinance To Exceed The Municipal Budget Appropriation Limits and To Establish A

Cap Bank (N.J.S.A. 40A: 4-15.14), was presented for second reading and final adoption. The Clerk announced the ordinance was posted and published according to law and copies were available in the Clerk's Office.

Mayor Craig opened the meeting for comment on the ordinance.

Joe Winters asked why the budget had to be raised, he had to live within his budget why couldn't the Township.

Mayor Craig read the ordinance to explain why it was being done. He stated the reason was so government could go on and it was a recommendation from the Auditor and CFO.

Mr. Winter said to vote it down.

Solicitor Baldini said it was already in the budget it wasn't anything new.

Mr. Winters asked what it was.

Councilmember Nolan asked if the CFO could prepare a report for the next meeting to explain it. Manager Jackson said it was already written in the budget to have surplus to go into the next year.

Councilmember Nolan motioned to **table** the ordinance, seconded by Councilmember Conrad. The ordinance was tabled by the following roll call vote: Councilmember Conrad, "yes", Councilmember Mazurek, "yes", Councilmember Douglass, "yes", Councilmember Nolan, "yes", Mayor Craig, "yes".

Ordinance #2007-06, An Ordinance Amending Chapter 400, Section 16 of the Code of the Township of Lower,

Establishing Regulations in R6 and R6/H Multiple-Family Residential and Hotel-Motel Resort Overlay Districts, was presented for second reading and final adoption. The Clerk announced the ordinance was posted and published according to law and copies were available in the Clerk's Office.

Mayor Craig opened the meeting for comment on the ordinance.

There were no comments from the public.

Councilmember Nolan motioned to adopt the ordinance, seconded by Councilmember Douglass.

Councilmember Nolan said it was to appease the State and the language was changed.

The ordinance was adopted by the following roll call vote: Councilmember Conrad, "yes", Councilmember Mazurek, "yes", Councilmember Douglass, "yes", Councilmember Nolan, "yes", Mayor Craig, "yes".

Ordinance #2007-07, An Ordinance Amending Chapter 400, Section 32 of the Code of The Township of Lower,

By Adding a Subsection Permitting Six Foot Fences Along State or County Highways, was presented for second reading and final adoption. The Clerk announced the ordinance was posted and published according to law and copies were available in the Clerk's Office.

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Mayor Craig opened the meeting for comment on the ordinance.

Ed Boyle said it was hard to see when you came out of McKinley Avenue and said he felt there maybe accidents there.

Solicitor Baldini said no fence should be in the site triangle.

Councilmember Mazurek motioned to adopt the ordinance, seconded by Councilmember Conrad. The ordinance was adopted by the following roll call vote: Councilmember Conrad, "yes", Councilmember Mazurek, "yes", Councilmember Douglass, "yes", Councilmember Nolan, "yes", Mayor Craig, "yes".

Ordinance #2007-08, Ordinance To Establish A Fee for the Performance of Ceremonies was presented for

second reading and final adoption. The Clerk announced the ordinance was posted and published according to law and copies were available in the Clerk's Office.

Mayor Craig opened the meeting for comment on the ordinance.

Councilmember Conrad motioned to adopt the ordinance, seconded by Councilmember Douglass. The ordinance was adopted by the following roll call vote: Councilmember Conrad, "yes", Councilmember Mazurek, "yes", Councilmember Douglass, "yes", Councilmember Nolan, "abstain", Mayor Craig, "abstain".

Ordinance #2007-09, Bond Ordinance Providing A Supplemental Appropriation of \$660,000 For The Bennet's

Crossing Recreation park Project In and By The Township of Lower, In The County Of Cape May, New Jersey and Authorizing the Issuance of \$627,000 Bonds Or Notes of the Township For Financing Part of The Appropriation, was presented for second reading and final adoption. The Clerk announced the ordinance was posted and published according to law and copies were available in the Clerk's Office.

Mayor Craig opened the meeting for comment on the ordinance.

Mr. Joe Winter 301 W. Florida Ave. asked who looked at the drawings and what were they paying them for.

Mayor Craig said the project started before the current administration took over. He said the Engineer was asked questions several times and then the company Fondacaro went bankrupt. He said they were now dealing with the bonding company.

Mr. Winters said he felt it should be tabled and get the money from the Engineer.

Bob Hartman 8 Earl Drive said he wasn't anti-recreation but he was anti-paying 2 times for the same thing. He said the ordinance would probably be passed and requested that any money recouped be put towards paying down the bond. He said the Empire State Building was built quicker. He mentioned he lived nearby and saw them move the dirt around until it was wore out. He couldn't believe how the project was being done. He asked who the Engineer was.

Mayor Craig said it was Van Note Harvey.

Mr. Hartman said he had been in a family construction business and said all their work had to be inspected. He said the whole thing was almost criminal.

Mayor Craig said the sod was put down under the old contractor Fondacaro.

Mr. Hartman said he couldn't believe the project, it was a disgrace. He recommended every dime go back to the bond. He asked who decided on the amount of \$660,000.00.

Mayor Craig said the Engineer came up with the amount for the fields, drainage, sod, grading and additional engineer costs.

Solicitor Baldini said it was not finalized what they were suing for yet. He said he was keeping a

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record of the costs and was working with the Engineer.

Mr. Hartman said they may end up suing for 1.5 million by the time things kept adding up. He asked who was overseeing the project now.

Mayor Craig said Remington & Vernick was overseeing the work now. Solicitor Baldini researched to see if the Township could do a professional services contract, but it was not possible. He said Remington and Vernick were doing the specs for the bid.

Mr. Hartman questioned if someone would be there all the time to oversee the work so it could be done right.

Councilmember Nolan said he spoke to Mr. DeBlasio from Remington & Vernick and told him how disgusted with the project and the process in government that you had to take the low bidder. He said he would like to see something in the specs as a management component so they had insurance it was done right.

Mr. Hartman said there were a lot of professionals retired here, hire someone like that for 3 months who was qualified to oversee it.

Councilmember Nolan said to amend the bond.

Solicitor Baldini said that couldn't be done on a bond ordinance, you couldn't target funds and explained it. He suggested not to amend it and would look into it.

Mr. Winters questioned on the first set of specs if they were appropriate to use.

Mayor Craig said the original set was from 2001 and they were not clear.

Mr. Winters asked who wrote the specs.

Mayor Craig said Van Note Harvey.

Mr. Winters said he was looking for answers.

Solicitor Baldini said he was doing background research to make sure all the details were in order. He was pursuing all the options to pursue law suits.

Mr. Winters said why pass the bond then.

Solicitor Baldini said the bonding company had done all they felt they were required to. He said with regard to when and if money was to come it may be possible some money would come from the bonding company. He said it may not come in for years.

Mr. Winters asked if it was possible to have the bonding company finish the job.

Mr. Winters and Solicitor Baldini went back and forth on the bonding company and how it worked.

John Morrison asked if the final payment was made.

Mayor Craig said there was some money held. He said the Township had to pay some of the sub-contractors when Fondacaro didn't pay them for the work.

Mayor Craig gave a brief overview of when the contract was awarded and when it was to be completed.

Mr. Morrison asked if the final inspection was done and the work certified to make the final payment. He explained how the Planning Board process worked when they held bonds.

Mayor Craig said the fields were not formally accepted.

Mr. Morrison said if they weren't accepted then their performance bond should still be somewhere.

Mayor Craig said the bonding company was saying their contractor did the fields according to what was presented, they were done to the specs.

Mr. Morrison asked why were they issuing more bonds to do the work instead of going after the bonding company of the contractor. He said they should have a performance bond.

Councilmember Mazurek said it was brought up in closed session before. He said he had a lot of time to think about it and walked the fields again. He said there was no question there were

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a lot of wet spots and water was a problem. He said Mr. Morrison made sense why spend 660,000 to fix a 3 million dollar recreation project and what did they get for that.

Councilmember Mazurek said they got the land from the State, the project was to be started in 1 year. He said the permitting took over 2 years, the cost rose and other problems occurred and now it's almost up to 4 million the timing of it was poor with the tax problems facing the Township.

He asked if the fields were safe to use then don't spend 660,000.00 to fix them. He said maybe it wasn't in the best interest to fix them now until they get all the figures in.

Mr. Morrison explained in his previous job he went over a situation involving a hospital and some problems with the work and how the bonding company corrected the problems.

Mayor Craig said the bonding company stated they were not responsible for the improper specs.

Mr. Morrison asked if the final payment would not be made until the fields were accepted.

Councilmember Mazurek said one group would say they were designed right but built wrong and others would say built right it wasn't their fault the specs were wrong.

Ed Boyle asked if the Engineers who designed it were bonded.

Solicitor Baldini said Engineers were not usually bonded.

Councilmember Mazurek said it made no sense to do the bond, they didn't know exactly what they were getting for \$660,000.00. He felt they should have a clear understanding as to what it would cover.

Mayor Craig said Remington and Vernick had a package put together of what would be done.

He said eventually all the sod was going to rot and felt the engineering company was at fault.

Dave Lepor of 217 Lennox Avenue said it was a bad situation for the Township he heard a lot of numbers tonight. He said he was at the hockey rink and there were no nets, you can't play without one. He said the tennis court had no nets and the practice field was a disaster. He said if you had to go to the bathroom you were out of luck because the doors were locked.

Mr. Lepor said the back fields were being worked on by the high school so did that mean the citizens couldn't use those field because of the high school. He said they had their own fields to use so who would benefit from the fields.

Mr. Lepor said he lived in Erma for 40 years and after all was done what would be there for the people to do. He said you couldn't see it now, but would the high school have a schedule which would eliminate everyone else.

Mayor Craig said the high school would be using the fields. He said they had a midget football team that existed for years due to the cooperation of the schools. He said there also was a little league team that used the schools fields. He said in the spirit of cooperation it would be nice to let the schools use the fields. He said it was a nightmare that Council inherited and they were trying to stay on top of it. He said red flags went up everywhere for the past couple years and was brought to the Engineer's attention and he said it was acceptable.

Mr. Lepor said he could see the problem was with the Engineer. He suggested to have a Clerk of the Works on site. He agreed with the spirit of cooperation. He said he was concerned that so much money was being spent and then being eliminated from using the fields. He said they wouldn't be able to use the softball field with the light pole located where it was.

Councilmember Nolan said Mr. Lepor brought up some good points. He asked if it would be possible to have the recreation department open the restrooms in the morning.

Manager Jackson said he would take care of that.

Kevin Lare said he was involved in sport programs and commented it was the nicest complex in the area. He wasn't for spending money but it needed to be done. He said to complete the

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project and then try and get the money. He asked Councilmember Mazurek to vote "yes".

Councilmember Mazurek said he sympathized with him but he couldn't vote for it until he knew about the bond and he was not one for throwing good money after bad.

Councilmember Nolan said they didn't get what they paid for, they went with the low bidder. He said the bonding company said it was built to specs, they need it fixed for the kids. He said he liked Mr. Hartman's idea. He said to fix the fields and go after who did wrong and recoup some of the money. The longer it was stalled the kids had to go without.

Councilmember Douglass said the Township was in a situation if they didn't move forward they would lose all that had been established. He agreed that more needed to be reviewed before pursuing litigation. He said if they went into litigation it could be years and if they wait it would cost a lot more. He said there were a lot of questions to be answered.

Councilmember Conrad agreed that they should be able to recoup some of the money and use toward the bond. He said they couldn't wait until the suits settled because costs could be more. He said the fields needed to be safe for the kids.

Mr. Winter questioned when the money was paid to the company who looked at the voucher and said to pay it.

Mayor Craig said the Engineer, Manager and Treasurer.

Mr. Winter said it seemed that no one was in charge.

Mayor Craig said there were problems from the beginning. He said there was a local company who's bid was \$150,000 higher and that company did other local sport complexes in the County that were great. He said they went with the low bidder Fondacaro and had problems from day one. He said if they didn't finish it, it would only cost more and they couldn't in good conscience not move forward.

Mr. Winter asked if Mayor Craig and Councilmember Nolan were on board when the bills were paid.

A brief discussion ensued.

Councilmember Conrad said there would be no future projects without supervision.

Councilmember Nolan motioned to adopt the ordinance, seconded by Councilmember Conrad.

The ordinance was adopted by the following roll call vote: Councilmember Conrad, "yes", Councilmember Mazurek, "no", Councilmember Douglass, "yes", Councilmember Nolan, "yes", Mayor Craig, "yes".

Administrative Reports

Attached and made part of the minutes are the following reports - Annual Report of Variances by Zoning Board, December 2006 - CFO

January 2007 Reports - Judge/Court, CFO

February 2007 Reports - Animal Control, CFO, Clerk, Court, Dog Licensing, Fire Safety, Vital Statistics

Council Comments

Bennett's Recreation Project

Councilmember Mazurek felt it was the wrong decision to spend the money. He said they had to make sure it was done right and put it to an end, he felt it was another nightmare waiting to happen. He said now it was going to bid and just hope it doesn't happen again.

Solicitor Baldini said he would work with Remington and Vernick on the specs.

Councilmember Mazurek said his "no" vote didn't reflect his dislike for kids. He said he wanted

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better for the kids. He said they are spending a lot of money to fix the fields and it would cost \$90,000 a year to pay the bond back for 14 years.

Mayor Craig said he had every faith in the Solicitor to go after those responsible for the problems.

Councilmember Douglass said he felt it was now under control and had to move forward if not they would loose more. He wanted to see the fields done and the kids there and believed they would be available for the residents.

Reval

He previously said he had no complaints regarding the reval in Ward 3, but a group from Diamond Beach were going through the process.

Bennett's Recreation Project

Councilmember Nolan told Councilmember Mazurek he was sorry the Township had to be put in that position. He said one of his reasons for changing the Solicitor and Manager was to get professionals on board. He said he saw the kids faces and felt they owed it to the kids to spend the money and not to would be irresponsible.

Councilmember Mazurek said he didn't feel irresponsible for not spending the money. He wanted to know exactly what the Township would be getting. He said originally Remington and Vernick said \$660,000 would allow them to do the whole thing, hire contractors etc.. He said they found out it couldn't be done that way and it had to go to bid. He said he needed to know what it would be spent on, it still seemed very vague.

Councilmember Nolan said they only had \$660,000 if bids came in higher they would have to be rejected.

Councilmember Mazurek went over what was discussed in the closed session regarding the project.

Solicitor Baldini said it would be the same cost one way or the other.

Recognition

Mayor Craig said an employee at the MUA had heart problems but quick action was taken by other employees and the police to help him.

Reval

He said he had information available from Assemblyman Van Drew regarding a bill that was introduced that pertained to fairness on property revals.

Make A Wish Weekend

Mayor Craig mentioned May 3-6 was Make A Wish Weekend and the money raised stayed in the County.

Public Comments

Mayor Craig opened the meeting for public comment at 8:05 pm.

Taping of Council Meetings

Bob Rizzo said he saw something in the paper about taping the meetings. He asked what was taking so long and what was the problem.

Manager Jackson said the school was looking into getting a camera. He said the school could lend them a camera

and one issue was to get the information on TV it had to be on a CD. He said hopefully by the

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next meeting it would be resolved.

Bennett's Recreation Project

Bob Rizzo said to make sure it was done right and the Township got their money. He said he would like to see it done for the least amount.

Truck Parking in Residential Areas

Bob Rizzo said he would like to discuss truck parking on residential streets. He said the police ordinance was vague. He said the truck was parked on a corner and it was dangerous to residents and kids.

Councilmember Nolan asked if the homeowners association addressed it.

Mr. Rizzo said he spoke to the owner and was given a hard time and it had been going on for 2 years now. He said North Cape May had a 4 ton weight limit on the streets.

Bennett's Recreation Project

A resident said he grew up here and there was nothing for kids and commended Council for what they were doing. He said the Township was far behind and things needed to be improved for the kids. He said the Township needed an indoor pool, hockey etc. and he did understand it would be a lot of money.

Councilmember Mazurek said he wanted to make sure there was a plan. He said it broke his heart when the school pool was shot down. He agreed for as big as the Township was the recreation was limited. He said the people were faced with a large tax increase and had to look at both sides as he represented various groups of people.

Mayor Craig said he was on the Recreation Board years ago and wasn't happy with the project and no one held the former governing body accountable. He said the Engineer who surveyed the Rutherford property was 100' off. He stated he did appreciate input from the public.

Recycling Cans

Emma Hendley 501 Shore Drive said the Township had a recycling program and understood the Township got money back for recycling and suggested giving the residents recycling cans. Mayor Craig said he would look into it.

Reval

Ed Butler said he was following up on the last meeting regarding having forms available and help filling them out.

Mayor Craig said he believed the Assessor said it would be a conflict to help the residents with the appeal forms since he may later be defending it.

Manager Jackson said the County Tax Board wouldn't release the forms to anyone so it wasn't possible for the Township to get them.

Mr. Butler asked about the Upper Township suit with CLT.

Solicitor Baldini said he spoke to Dan Young the Attorney for Upper Township and was told they had the same area's of concern as Lower Township. He said Upper Township handled things as Lower was doing. He said they were not happy with the rates charged and they held back some money and CLT accepted it.

Mr. Butler asked if Lower Township could do the same things and hold some pay. He said it was a hard process for the citizens to get change through appeals.

Councilmember Douglass spoke to a group in Diamond Beach and they were going as group effort to appeal it.

Bennett's Recreation Project

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John Morrison said about 10 years ago they went through a similar problem with the Police Safety Building and that finally passed and so would the Bennett's issue. He asked Councilmember Nolan if firm drawings and specs were given by the Engineer. He said the bond ordinance prospectus should state what was needed to be done. Further discussion ensued on what was needed to correct the project.

Self-Insurance

Alice Rogue read a statement by her fiancé regarding the \$75,000 saved by the Manager by going to self insurance for the Township. She asked if a risk analysis and cash flow analysis were done and was the Township going to purchase stop loss insurance. Solicitor Baldini said both risk and cash flow analysis were done. He said Mark Senior met with him and the Manager and they had a good idea of what the Township had been spending. He said over the past years the costs were overestimated and the Township was always under. He said as far as he knew the Township wasn't purchasing stop loss insurance.

Budget

Ed Butler said there was a confusing article and numbers in the paper regarding the budget. Mayor Craig said he knew what article he spoke about and it was confusing and it wasn't clear.

Resolution #2007-89, A 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 (Labor Relations) Councilmember Nolan motioned to adopt the resolution, seconded by Councilmember Douglass. The resolution was adopted by the following roll call vote: Councilmember Conrad, "yes", Councilmember Mazurek, "yes", Councilmember Douglass, "yes", Councilmember Nolan, "yes", Mayor Craig, "yes".

Resolution #2007-90, Ratification of Contract Between the Township of Lower and Lower Township Superior

Officers Association (Ltsoa) for the Years 2004 Through 2007 Councilmember Mazurek motioned to adopt the resolution, seconded by Councilmember Nolan. The resolution was adopted by the following roll call vote: Councilmember Conrad, "yes", Councilmember Mazurek, "yes", Councilmember Douglass, "yes", Councilmember Nolan, "yes", Mayor Craig, "yes".

Mayor

Township Clerk

Approved: April 2, 2007