

Regular & Work Session Meeting Minutes - August 4, 2008

The regular meeting of the Township Council of the Township of Lower, County of Cape May, State of New Jersey was held on August 4, 2008 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 Glenn Douglass
Councilmember Robert Nolan
Mayor Walter Craig

Also present: Paul Baldini, Solicitor and Joseph Jackson, Manager
Absent: Councilmember Wayne Mazurek (Excused - Vacation)

WORK SESSION

Review of Consent and Regular Agenda Items

There were no questions or comments on the consent or regular agenda items.

Consent Agenda

1. Approval of Minutes July 21, 2008
2. Resolution #2008-200 Payment of Vouchers, \$3,493,725.07
3. Resolution #2008-201, Authorization for Tax Refunds
4. Resolution #2008-202, Certification of Lot Clearing Charges to the Tax Collector
5. Resolution #2008-203, A Resolution Requesting Release of Dumpster Bond for Gail Heinold
6. Resolution #2008-204, A Resolution Authorizing the Execution of the contract between Remington, Vernick & Walberg Engineers, Inc and the Township of Lower for the 2008 DJ DCA Small Cities Block Grant for ADA Improvements to the Municipal Building (Contract NTE \$46,800)
7. Ordinance #2008-15, Ordinance Appropriating \$189,996 From Proceeds From An Interlocal Agreement With The County of Cape May For Improvements to Municipal Hall In Order To Comply With ADA Requirements In and By the Township of Lower, In The County of Cape May, New Jersey, 1st rdg. (2nd rdg. August 18, 2008)
8. Ordinance #2008-16, An Ordinance Amending Section 400-80(A) of the Code of the Township of Lower, Providing The Fees for Applications for Development, Site Plan Review, Variances and Conditional Uses in The Township of Lower, 1st rdg. - Increases applications fees and escrow fees variance applications, conditional use applications (2nd rdg. August 18, 2008)
9. Ordinance #2008-17, An Ordinance Amending Chapter 400, Section 17 of the Code of the Township of Lower, By Adding a Subsection Permitting Lodges & Clubs in the General Business Zone, 1st rdg. (2nd rdg.

Regular & Work Session Meeting Minutes - August 4, 2008

August 18, 2008)

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

Regular Agenda

Ordinance #2008-13, An Ordinance Determining Eligibility for the Defined Contribution Retirement

Program (DCRP) Pursuant to N.J.S.A. 43:15C-2 Et Seq. , was presented for second reading The Clerk announced the ordinance had been published and posted according to law. Mayor Craig opened the meeting up for public comments on the ordinance. There were no public comments.

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

Ordinance #2008-14, An Ordinance Authorizing the Township of Lower to Enter into A Reimbursement

Agreement with Diamond Beach Development, LLC For Reimbursement of the Costs Associated With The Inspection of "The Grand" Resort at Diamond Beach was presented for second reading

The Clerk announced the ordinance had been published and posted according to law. Mayor Craig opened the meeting up for public comments on the ordinance.

Frank Saracco, 208 E. Tampa Avenue resident questioned the ordinance's purpose. The Mayor explained the Township was not a Class 1 municipality because the current construction inspectors did not have the additional certifications needed, requiring the Township to have State inspectors for certain inspections with all permit fees going to the State. He said the ordinance would allow the Township to do the inspections which could be done quicker and the Township would retain a portion of the permit fees.

Mr. Saracco asked if the Township would be paying the two inspectors to be hired and was told by the Solicitor, they would.

Mr. Saracco asked why the developer was in such a hurry and what the "class" of the municipality had to do with it.

The Mayor said the sooner the project was completed and CO;s issued the better for the township, explaining that the property could not be assessed and the taxes established until the CO's were issued.

Councilman Nolan pointed out the agreement was only for one year and the two inspectors to be hired under it would receive no benefit package from the township. He explained that having these two inspectors with their certifications would move the township to a Class 1 municipality and allow the township to keep 20% of the inspection fees.

Mr. Saracco asked if the inspectors would eventually become full time employees.

Councilman Nolan said the current plumbing inspector would be retiring in the near future so it was possible the one being hired for the plumbing inspections may eventually be picked up to fill the vacancy.

Joe Winters asked if the two inspectors would be retained and used for the second phase of the project.

Mayor Craig it was too early to know what would be done.

Mr. Winter said he was concerned the inspectors would start as part time and end up full time

Regular & Work Session Meeting Minutes - August 4, 2008

employees.

Council agreed and Mr. Winter suggested the ordinance state the positions would not become full time.

Councilman Nolan read from the ordinance stating the positions were part time, however, if the current plumbing inspector retired it was possible the person could be hired to fill the vacancy. The Solicitor said the part time title would be vacant and the person could apply for the full time position if it became available.

Councilman Nolan pointed out the Construction Official, Mr. Playford was recommending all inspectors get the HHS certification.

Mr. Winter asked if residents of the township would be given preference and Councilman Nolan said he didn't think that would be a problem.

No further comments, the Mayor closed the public hearing.

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 "Absent", Councilmember Douglass, "yes", Councilmember Nolan, "yes", Mayor Craig, "yes".

Administrative Reports

The Personnel Report and Tax Collector's Certification were noted as received.

Council Comments

Angel Food Ministries & National Night Out

Councilman Conrad announced the Angel Food Ministries program was still going on. He said the food package was a good deal and anyone could participate. He also announced that National Night Out would be held at the high school from 7 - 9 p.m. on August 5, 2008. He urged everyone to attend the free event.

National Night Out & Coombs Douglass Run

Councilman Douglass also recommended attendance at National Night Out, stating there were many local civic and education groups that would be providing information. He said the Coombs/Douglass run went well and he wanted to thank the Town Bank Fire Company and the Recreation Department for all their help.

Movie Night - Mulligan Field

Mayor Craig announced that movie night would be starting on Wednesday at the Mulligan Field and was free to anyone who wanted to attend.

Mayor Craig opened the meeting to the public for comments.

Stormwater Outfall Project

Susan Carl of 300 W. Delaware Parkway said her home was close to the newly constructed storm water outfall pipe and said it was her understanding the Township's DEP permit was for maintenance and not new construction. She said she was told there was to be no work on the beaches until after August 31. She also said she felt the maintenance permit the township was using was not valid since there were changes being made. Mrs. Carl asked if a CAFRA permit had been issued and said many of the owners of the bayfront homes had not been consulted prior to the work being done.

Councilmember Conrad said he grew up in the area and the pipes went out much further. He said the project was for flood mitigation and not really new, noting the pipes had just grown shorter over the years due to natural deterioration. The Councilman said other homeowners were being flooded at times because the outfalls couldn't drain properly.

Deborah McFadden of 117 Millman Lane said it had been said the pipes had been there since the 1970's but she felt the community was different now and the township should be looking at

Regular & Work Session Meeting Minutes - August 4, 2008

alternative solutions. Ms. McFadden said the bayfront was a gem and needed to be taken care of. She said solutions were needed that would help everyone and suggested perhaps some type of underground drainage system.

Lois Thomas, 210 Frances Avenue, said her property had flooded three times in the last few months. She said she retired to the community for peace and quiet and noted the problem had been ongoing for 20 years. Ms. Thomas said she had environmental concerns also but didn't feel the outfall water was the major pollutant of the bay.

Ken Tomski, Millman Lane, said everyone wanted to see the carbon cycle work, noting when K-Mart and Walmart were built the engineers had to figure out how to drain water from paved areas. He said Skill's Beach had a drain off area and a natural buffer zone and said the engineer should be able to design some type of drainage. Mr. Tomski said there was no reason to do the work at the present time. He agreed that something should have been done for the drainage problem on Frances Avenue. Mr. Tomski said there were serious issues that needed to be addressed along the bayfront. He again urged Council to have the engineer look into other drainage options and using the carbon cycle.

Jim Dougherty, 701 Delaware Avenue, said he was unclear as to what everyone was discussing. He asked if he missed some meeting that everyone else had been to since there were so many people in attendance.

Solicitor Baldini told Mr. Dougherty he had missed no meeting.

The Mayor said the first time he had been informed there was a problem with the outfall project and the bayfront homeowners had been last Thursday.

Mr. Dougherty said he had no knowledge there was a project and asked why rushing into it when all alternatives hadn't been explored yet. Mr. Dougherty said the residents deserved to be heard.

Howard Carl, 300 W. Delaware Parkway, said the drain pipes going into the bay would have a detrimental effect on the homes along the bayfront. Mr. Carl said the township could lose a substantial amount of tax money if the value of homes along the bay dropped in half because of the projects. Mr. Carl said he did not feel public safety was an issue and felt the township misused and misinterpreted the DEP maintenance permit they had and had no concern for wildlife or the property owners. Mr. Carl said he refused to allow a few people to push the project forward and destroy the value of his property.

WaWa - Villas

Ed McKinstry, 15 Alabama Avenue, said he had a problem with the late night deliveries and the noise at the Villas WaWa. He said he had to leave for work at 5:30 a.m. and the late night deliveries were interfering with his sleep. Mr. McKinstry said he had spoken to WaWa and they were not willing to help with the problem. He also complained about the motorcyclists that meet there and stay till 1 a.m. Mr. McKinstry said water was laying in the drainage area and attracting mosquitos and trash is not being taken care of.

Walter Miler, 1518 Main Street, said at all the zoning board meetings when WaWa was seeking approval they agreed to all the changes that were suggested, then later changes were made and the residents were not notified. He complained that kids were hanging out, smoking and something needed to be done to make WaWa responsible. Mr. McKinstry said he heard CVS would soon be coming and asked if the neighborhood would have to put up with late night deliveries there also. Mr. Miller concluded with a complaint about the junk cars and junk scrap metal on the rescue squad property on Main Street.

Stormwater Outfall Project

Mr. Charles Tagg, 89 Millman Lane asked if the Township was contemplating more drain pipes and what their elevation would be. He asked why some were 60 feet.

Councilman Nolan said the Public Works Director would be answering questions about the project later in the meeting once everyone had a chance to speak.

WaWa Villas

John O'Rourke of 1514 Main Street also complained about the activities at the Villas WaWa

Regular & Work Session Meeting Minutes - August 4, 2008

and said the residents in the area had been sold a bill of goods. He complained once the store got all its approvals and was there, all the promises were forgot about.

Councilmember Conrad said it was the first he was hearing about the problems at the WaWa and said as Ward 1 Councilman no one had reached out to him.

Mr. O'Rourke told the Councilman the rescue squad shouldn't be allowed to pile scrap metal on the property it should be in somebodys yard and said it was not fair they had a junk vehicle with no plates while residents would receive tickets for the same thing.

Mike Marella, 301 W. Pacific Avenue, voiced his concerns on the entrances and the ruts created where the cranes and equipment were being unloaded for the outfall project and asked who would be responsible to clean it all up. He said he had riparian rights and wanted to know who would be responsible for all the disturbance. Mr. Marella said there was now a 10 foot deep hole at the end of Spruce Avenue.

Mary Marella said she saw the cranes on Monday the 28th and called the DEP. Ms. Marella equated the residents to shareholders and said in her job as a project manager, when a project is to be started the first thing done is to notify the shareholders. She said the cranes could have killed the eggs of nesting birds and the damage of that would not be know for years. Ms. Marella also said drainage pipes out on the beach were used in the 1950's when that was the way to handle it. She said she had sent the County, the Township and the MUA a packet of information and received no response from anyone. She said there was a pumphouse with water being dumped out and at one time there had been a coliform count of 15,000 from the pipe. Mrs. Marella said Middle Township had no outfall pipes. She complained she could no longer kayak in the area and the township needed to halt the project and change the plan.

Mike McFadden, 117 Millman Lane, said the bayfront was the most significant asset the township had and people came just to enjoy it. He said if the property values were negatively impacted by the project there could be a legal suit.

WaWa Villas

Darlene Hoffecker, 7 Alabama Avenue, said she had been dealing with the problems at WaWa for months. She said the cars travel to fasts, trash blows all over and groups of teens hang out.

She said there is broken glass and problems and she never sees the Police there. Ms. Hoffecker asked if speed bumps and trash cans could be installed at the end of the driveway exists for the people who walk and bike there. She said it would be better if they replaced the chain link with a solid fence and commented traffic was already a problem so adding a CVS in the next block would only make it worse. She asked Council for help.

Councilmember Conrad said the Manger would look into the matter as would he.

The Mayor directed the Manager to work on the complaints raised about the WaWa.

Stormwater Outfall Project

Jacqueline Bell, 105 Millman Lane said a few months prior she had given Council a lot of literature on stormwater management and other environmental issues. She said she hoped someone had looked at the material and while she was not an engineer, she did know that you don't need a hammer to kill a fly. Ms. Bell said she had information she wanted to give Council on some issued that affected Barnegat Bay and said the prior information she had given them addressed other systems that could be used. She said the water coming out of the outfalls was not just water but asphalt from the roads, animal feces, nitrates and all kinds of things that washed into or people dumped into the storm drains. She again said she had various literature available if anyone was interested.

Mr. Carl said there were many people present who were also opposed to the project but were not speaking and asked them to stand.

The Mayor acknowledged those standing and said the meeting was not mean to be adversarial.

He said the Public Works Director would be speaking shortly. He said he had heard it was a beach maintenance project but listening to some of the comments might indicate it was more

than maintenance.

Ed Butler said he felt if the people present were really interested they would have been at prior meetings when the contract was awarded for the project. He said he lived next to the pump house and the outfall pipe extended 20 feet out yet was clogged with sand each time a storm came. Mr. Butler said the pipes needed to be extended and capped to allow the water to drain out and the sand from getting back in. He said the seagulls were killing the eggs not the equipment and stated there were no nesting birds and babies at the present time. He said if a child got killed in the large holes created by drainage problems now it would cost the township plenty. He said the township needed to proceed and fix the problem.

Gary Douglass, Public Works Manager, told those in attendance the project was designed by the Township's Engineer and reiterated there was currently a beach maintenance permit which was felt to be appropriate for the work being done. He said the work was to existing pipes that had been buried or had fallen into disrepair over the years and explained that no new outfall pipes and locations were being added. Mr. Douglass said he had a diagram from years prior when the pipes were 95 feet out and again emphasized no new pipes were being added rather existing pipes were being extended to keep the system working properly.

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Regular & Work Session Meeting Minutes - August 4, 2008

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Mr. Dougherty asked Mr. Douglass what the report date was that he was referring to.

Mr. Douglass said he didn't have that information readily available. He said he had correspondence from the Army Corps showing the outfall pipes existed and again said no new outfall pipes were being constructed.

A resident asked where the project was located and was told it covered nine outfalls between Lincoln Boulevard north to the Villas.

Mr. Douglass said to reroute the stormwater system as suggested, would cost millions of dollars. He said the township was just fixing what was already in place and said some pipes were being extended to get the proper elevation so the valves would work correctly.

Mr. Dougherty interrupted asking if an alternative analysis had been submitted and if not, he wanted to see a full analysis before the township continued any further. He asked if the project could be put on hold.

Paul Baldini, Solicitor, advised Mr. Douglass to continue with his presentation.

The Public Works Manager again stated the project was designed by an engineer and bid out. He said currently the township had to go and dig out the sand from the drain pipe ends to allow the water to drain out. He said that method cost the township and taxpayers a lot of time and money in labor and equipment. Mr. Douglass continued that it was possible the township may need some additional permits to continue the work but that would be determined after discussions with the DEP and the township's attorney. He noted that not all the extensions were 60 foot long and stated the beach entry points for the equipment had been predetermined to disturb as little as possible. Mr. Douglass also said the contractor would return everything to it's original state when the work was done. He said the project was currently stopped due to possible nesting birds but would resume in September when permitted.

A resident asked if the equipment and supplies would remain in place until September when the township was permitted to start again and was told by Mr. Douglass the contractor would be notified to remove the equipment until the project was started again.

A gentleman asked how it was known that a 60 foot pipe would work.

Mr. Douglass said he had to rely on the professional recommendation of the engineer that sixty feet was needed to end at the one foot elevation.

Mr. Carl asked if there was an alternate plan if the township didn't get the approvals they wanted.

Mr. Douglass said they would have to continue to manually dig out the sand each time as they have been doing.

Dialog continued on the pipes, the elevation, how people would get over or around them once

Regular & Work Session Meeting Minutes - August 4, 2008

the project was completed. Concerns for children playing or climbing on the pilings that had been installed were also raised. It was suggested they would be gathering points for young people which could create other problems with drinking or drugs.

Mr. Douglass pointed out that other homeowners were having their property damaged and losing personal property under the current conditions because the outfalls were not working correctly causing flooding in certain areas.

Discussion continued on the flooding problems and the residents affected by that due to the outfalls that were not working along with the bayfront property owners who felt outfalls along the bayfront were not the answer and would cause other problems.

Mayor Craig closed the public portion of the meeting stating many questions and ideas had been brought raised and a dialogue had been started but there may be others in attendance who want to address other issues unrelated to this project with the Council.

Township Hall - Flower Garden

Bob Rizzo said the flower garden in the front of the municipal building looked great now that it had been weeded. He asked the township to contact the owner's of the closed Poppa John's and have them cut the grass.

Trash

Mike Pearson, 219 W. Hudson, said there was often a lot of trash on the beach or the street ends and asked if trash cans could be placed there.

A resident protested that suggestion and said cans created more problems as people would dump household trash and other things.

Outfall Project

Someone suggested Council walk along the bay and get a first hand look at the project that had raised so much discussion.

Councilmember Douglass said he walked on the bay often. He said the pilings that had been placed there would eventually be cut down once the pipes were done and in place. He told Mr. Carl that he too was a licensed real estate agent and real estate value were down everywhere, not as a result of the outfall project.

Elk's Lodge

Joe Winter inquired about the change in the Land Use ordinance that was introduced that would permit the Elk's Lodge to locate in a strip mall unit near St. Raymond's. He asked Council if another club was needed in the Villas and thought it would be competition for the VFW which was already existing less than half a mile away.

The Clerk explained the ordinance change was to permit "Lodges and Club" in the GB area and was recommended by the Board as an appropriate use for the area. She said the liquor license was a separate issue and had it's own requirements.

Energy Program

Jackie Bell asked the Manager if he had reviewed an energy program for the township. The Manager said he had not.

Beach Access Gate - Townbank

Councilman Nolan asked Mr. Treon to speak on the locked gate in Townbank on the beach. Townbank Fire Chief Art Treon said there were some people who had concerns about the gate that was being locked on the beach. He explained the gate was there for the fire company access way when they needed to launch their small boat for rescues. It was now being locked to prevent large vehicles and boat trailers from using it as access to the beach. He said it was to protect the beach and dune area along with improper use of the beach by prohibited vehicles.

No further comments, on motion by Councilmember Douglass, seconded by Councilmember Nolan, the meeting was unanimously adjourned at 8:55 p.m.

Regular & Work Session Meeting Minutes - August 4, 2008

Mayor

Township Clerk

Approved: August 18, 2008