

Regular & Work Session Meeting Minutes - January 21, 2009

The regular meeting of the Township Council of the Township of Lower, County of Cape May, State of New Jersey was held on January 21, 2009 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 Kevin Lare
Mayor Michael Beck

Also present: Anthony Monzo, Solicitor and Kathleen McPherson, Manager

WORK SESSION

Faulkner Act Presentation

Mayor Beck introduced Kathy Cupano, Program Development Administrator for Rutgers University who gave a power point presentation on the Faulkner Act. She started the program by going over the Township's form of government which is Council Manager Form. She reviewed Council powers which all policy and powers rested with Council alone. The Council appoints the Clerk and Manager, they may provide for the appointment of an attorney, and other boards, Council acts as a body. They cannot go directly to the departments they must go through the Manager. Councilmember Conrad asked if Council could ask a Department Head to look into something for them.

Ms. Cupano suggested the clearest way would be to go through the Manager. She said Council should act as a body, at times things posed by an individual could be perceived wrong. It was better to go through the Manager, the statute was clear.

Councilmember Lare asked Ms. Cupano to define power of inquiry.

Ms. Cupano said it would be more of an investigative nature to look into something. She said if need be they could form an investigative committee.

Mayor Beck said he wasn't sure everyone understood how important the concept was. He said he felt as Mayor he could call and pass on information to Department Heads.

Ms. Cupano said the Manager was the point of contact.

Mayor Beck asked if Council couldn't call the Department Head could the Department Head call Council.

Ms. Cupano said again, the Manager was the point of contact, there was a chain of command. She said if it was violated it could cause chaos. She stated in this form of government the Manager that took care of the day to day operation. She said it was a good form of government and they had to follow the rules.

Presentation to Officer Don Vanaman by Joe Orlando, CMC District Commander VFW

Mr. Orlando said each year they look at the Police to choose a deserving officer. Officer Vanaman was a soldier and earned a bronze star while serving in the military.

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Discussion of Mandatory Water Connection

Mike DeMarcantonio, Executive Director of the MUA was present to discuss the mandatory water connection. Mayor Beck said there were 2 sides - were they in favor of hook up and were they in favor of the ordinance proposed.

Mr. Demarcantonio said it was needed for several reasons. He said several sources of funding mandated mandatory connections. He said they would review each and every project to see which would provide the most service. He said Lower Township should qualify for funding for infrastructure.

Mr. DeMarcantonio said in the past the Township mandated hook up for specific projects and over the years the Township and MUA did not enforce that. He said it wasn't a new idea it was now on a larger scale there were 479 properties not connected. He said the USDA would help fund the water lines for the balance of the Villas and Town Bank areas. He said 25% would be a grant and the rest would be a loan with low interest which would help more customers. He said the USDA would come to the Township Hall or MUA and hold interviews for any resident who may be eligible for a 405 or 502 grant.

Mr. DeMarcantonio gave the criteria for the 405 or 502 loan programs. He said there were 6875 users with 479 not connect presently. He said they would have to calculate for each year. They came to an agreement of \$1,600.00 all inclusive fee. He said the revenue would increase if they got the 479 on. He said the rates would not increase in 2009 and the residential fee would be good for 5 years - \$1,600. residential - \$1,800 for businesses and \$2,100 for commercial per unit. He said the MUA used 868 million gallons per year, in 2004 produced 469 million, 2005 - 465 million, 2006 - 224 million, 2007 - 440 million, 2008 - 396 million. He attributed the lower amount to no drought and new plumbing fixtures.

Mr. DeMarcantonio said the drinking water was tested all the time and some homes were not even tested. He said compared the cost of a new well and maintenance versus city water. He felt it was a good program and the MUA Board and Council worked hard and thought it was fair. He said they would continue to look for more funding from the USDA. He mentioned the Millman Water Tower Project they had until August 2010 to have it done.

Councilmember Douglass asked if an ordinance was passed previously why were they going to do another one.

Mr. DeMarcantonio said those ordinances were project specific and when the MUA installed the lines they had to loop them. He further explained when those projects were done the people weren't mandated to hook in.

Councilmember Douglass asked if the connect was to the street or home.

Mr. DeMarcantonio said that included the water service to the curb, water meter and meter pit. He mentioned the prior fee of \$1,046 did not include the meter pit.

He said the \$1,600 was for the Township.

Councilmember Conrad asked if the MUA would be getting rates from various plumbers.

Mr. DeMarcantonio said the MUA couldn't contract with them, but would provide a fact sheet with all the requirements. He said he would ask for the prices and give the information to the people.

Councilmember Lare asked what the need for the water tower near the Millman Center was for.

Mr. DeMarcantonio said they were required to have a certain amount of water in the air fed by gravity in case all the electric failed. He said the tower would increase the supply and pressure. He further explained the need.

Mayor Beck asked if the public had any questions.

Karen Waterman of Tabernacle Road suggested that Realtors disclose this information regarding water hook up to prospective buyers.

Ed Butler of the Villas said the taxpayers had argued the issue of water. He said it had to be done for the people and thanked Council and the MUA. He said the people needed help and was sure the MUA would help to assure the people received good water. He stated he would like the areas that needed it the most get it first.

Mr. DeMarcantonio said the MUA would do everything in their power.

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Rick DeMarino of Greenwood Avenue asked with the main in the street it would cost \$1,600 what about those who do not have a main there.

Mr. DeMarcantonio said it would be \$1,600 for everyone.

Mr. DeMarino asked if he could pay now while he had the money.

Bob Rizzo of Mickles Run thanked Mr. DeMarcantonio for the terrific presentation.

George Doherty expressed his concerns regarding his well. He said his well was good and to be forced to hook up wasn't right he said many people didn't need it. He read an excerpt from a paper which stated in Voorhees there was a dramatic increase in the water rates.

Mr. DeMarcantonio said that was a for profit water company called American Water, the MUA wasn't increasing their rates this year.

Mr. Doherty asked if he could get a phase plan for the project.

Mayor Beck suggested he contact the MUA regarding that.

Mr. Doherty said he felt it should be put aside until all the cost and plans were available. He said plumbers could cost thousands and the people couldn't afford it.

Mayor Beck said it wasn't a tough choice for him. He told Mr. Doherty the public hearing on the ordinance would be February 18th.

Update on Status of the Francis Avenue Storm Sewer Project- Hatch, Mott & MacDonald

Steve Morey and Mark Sray gave an update on the Storm Sewer Project. Mr. Morey said a permit was issued on Dec. 16, 2008 there were conditions that required a CAFRA permit and Tideland Conveyance, also needed was Army Corp. authorization.

Mayor Beck asked if they were saying more permits were needed.

Mr. Morey said yes, the additional permits were needed before any work could be done. He said they had a waterfront development permit.

Councilmember Lare asked how long would it take to obtain the permits.

Mr. Morey said once the application was submitted it would take about 4 - 6 months which would be alright since no work could be done before May and then you couldn't do anything until after September.

Councilmember Mazurek asked if they could get an emergency permit.

Mr. Morey said they could possibly get a permit to clean out the pipe but not likely to extend the pipe to the water.

Councilmember Conrad said cleaning out the pipes had proven to help.

Councilmember Douglass asked if the Township had an emergency permit.

Councilmember Mazurek said the Township was led to believe they could do work in the existing foot prints.

Mr. Morey said the beach maintenance permit would allow the Township to do certain work, there was nothing in writing for excavating.

Gary Douglass, Public Works Director said he had an email from DEP permitting the Township to clean 2 or 3 outfalls and said he would provide it to Mr. Morey.

Mayor Beck said some people were waiting for relief. He said it appeared that the Township dropped the ball, but were working on it.

Anthony Monzo, Solicitor - Legal Update

Solicitor Monzo said he gave Council a memo on many legal issues that could not be discussed in public, but gave an overview of what was existing.

Solicitor Monzo said on the Francis Avenue Project a notice of penalty was received on January 7, 2007 for \$72,500 and said there were several inconsistencies in the DEP letter. He said 2 incidents prompted the Notice of Violation. He said both were in August, the violation at Francis Avenue was to do with pilings and work done on land not owned by the Township. He said the Township would file a request for hearing with DEP. The 1st violation was

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\$22,500 and the 2nd was for \$25,00 each for 2 days.

Bennett's Crossing - Solicitor Monzo said it went back to 2004 when the original award went to Fondacaro. In 2005 the problems started when 75 to 80% was completed, then Fondacaro stopped paying the subcontractors and gave the Township permission to pay them out of the contract balance. He said Fondacaro were no longer performing any work and were in default then the project was delayed for a year. Everything was turned over to the bond company. The Township took over in 2006 with the surety company and entered into an agreement. He stated more issues and said the fields were in bad condition and the money was expended.

Solicitor Monzo reviewed the takeover agreement. He said Fondacaro filed suit for the balance of the contract. He said they went to court on binding arbitration, but he didn't believe Fondacaro was entitled to anything.

Manager Removal - Solicitor Monzo said Joseph Jackson had requested a hearing which would be held on February 2, 2009 and it was not a judicial hearing. He stated the Faulkner Act did not require cause, it allowed him to state his facts. He said after the hearing Council can have a final resolution to remove the Manager and he would receive a final 3 month pay.

Affordable Housing - Solicitor Monzo said the Township did not yet have a fair share plan to protect against builder remedy. He said until a plan was submitted the Township could be sued. He said round 3 round project prior to 2004 wasn't relevant. He said 20% residential development had to be affordable.

The State had developed a State Plan until the Township had a plan in place and the process required an engineer work with the Planning Office a public hearing is held and adopt a plan and it is sent to COAH. He explained that as soon as the Township had a plan in place the better position they would be in.

Solicitor Monzo said there was no firm under contract to do the work, if Hatch Mott or if they had someone who had some expertise do it as soon as possible.

Councilmember Lare asked if there were any assurances the rules wouldn't change again.

Solicitor Monzo said the rules changed due to a lawsuit.

Councilmember Lare said he was concerned that Council spend another \$25,000 and the State changes the rules.

Solicitor Monzo said the Township would still be in a better position with a plan, you had control over building and had protection rather than no plan.

Councilmember Lare said he saw the Surety Company paid for the resurfacing of the hockey rink in 2006 and it had already cracked and was in need of repair.

Solicitor Monzo said maybe there were some warranties that may cover to have it redone.

Open Government

Mayor Beck talked with the Manager, Clerk and Council on having the agendas put online. He wanted to have the copy fees lowered and it was agreed to 20 cents.

Review of Consent & Regular Agenda Items

No Council comments.

Public Questions/Comments on Consent Agenda Items

Ed Butler of Bay Drive asked if more explanation could be put on the agenda for the resolutions.

Mayor Beck said they would be appointing Wayne Weissman to the MUA Board.

Councilmember Lare said he would like to move the approval of Dec. 15th, 2008 minutes to the regular agenda.

Council agreed by verbal "ayes".

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Consent Agenda

1. Approval of Minutes, Dec. 15, 2008, January 5, 2009
2. Resolution #2009-31, Payment of Vouchers, \$2,177,302.17
3. Resolution #2009-32, A Resolution Requesting Reduction of Performance Guarantee for Cape May National Estates, LLC; Block 510; Lots 24.01, 24.02 & 24.13, Escrow #P04-10-09
4. Resolution #2009-33, A Resolution Requesting Release of Demolition Bond For Block 783, Lot 10, 103 Roslyn Avenue, North Cape May, NJ 08204
5. Resolution #2009-34, A Resolution Requesting Release of Maintenance Guarantee for Niki, Inc.; Rainbow Ice Cream Parlor; Block 494.54, Lot 3; Escrow Z04-12-06
6. Resolution #2009-35, A Resolution Requesting Release of Demolition Bond for Block 409, Lot 1.07, 723 East Tampa Avenue, Villas
7. Resolution #2009-36, Certification of Lot Clearing Charges to the Tax Collector (131 Sunset Dr. Blk: 430 Lt: 1)
8. Resolution #2009-37, Paris Grant Program for Shared Services with the County of Cape May (Public Archives & Records Infrastructure Support Program)
9. Resolution #2009-38, Resolution Authorizing Participation in the New Jersey State Health Benefit Program
10. Resolution #2009-39, Resolution Authorizing Participation in the New Jersey State Health Benefit Program Coverage of Certain Retirees
11. Resolution #2009-40, Resolution Authorizing To Elect a Premium Delay Option (1 month delay)
12. Resolution #2009-41, Local Arts Program Grant Award - \$5,528.00
13. Resolution #2009-42, Authorization for Refund of Taxes (Blk: 650 Lt: 3)
14. Resolution #2009-43, Approval of Precious Metals License for Adele Christensen t/a Adele's Jeweled Treasurers for the Year 2009
15. Resolution #2009-44, Renewal of Junk Yard License for Cape May Used Auto Parts
16. Resolution #2009-45, Transfer of 2008 Appropriations (\$8,700.00)
17. Resolution #2009-46, Appointment of Broker Record for 2009 (Mark Senior of NJ National Associates for dental and life insurance)
18. Resolution #2009-47, Approval of Change Order #1 for the HVAC & Mechanical Improvements to Lower Township Recreation Center (\$11,328.00)
19. Resolution #2009-48, Appointment to the Lower Township MUA (Annual 5 year appointment)
20. Resolution #2009-49, Resolution Approving Settlement of Tax Appeal Litigation Known as Wayne M. & Donna R. Thomas V. Township of Lower
21. Ordinance #2009-01, Ordinance of the Township of Lower, in the County of Cape May, New Jersey Providing Mandatory Connections of all properties to the Lower Township Municipal Utilities Authority Water System and Amending and Supplementing all Prior Ordinances Dealing Therewith (2nd rdg. Feb. 18)

Councilmember Mazurek motioned to adopt the consent agenda items 1-21, seconded by Councilmember Douglass.

The consent agenda was adopted by the following roll call vote: Councilmember Conrad, "yes", Councilmember Mazurek, "yes", Councilmember Douglass, "yes", Councilmember Lare, "yes", Mayor Beck, "yes".

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Regular Agenda

Approval of Minutes - December 15, 2009

Councilmember Conrad 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 Lare, "abstain", Mayor Beck, "abstain".

Resolution #2009-50, Lower Township Rescue Squad (Dispatch Training)

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

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

Administrative Reports

December 08 Reports - Animal Control, Clerk's Account, Dog Licenses, Fire Safety, MUA, Public Works, Tax Collector, Vital Statistics
2008 Annual Tax Collector Report

Council Comments

Councilmember Lare said the recycling tonnage was down for the year and would discuss it with the Manager. He said the Township had a preliminary budget and were presented with a 1.4 cent tax increase for 2009 and would advocate for further reduction.

Public Comments

Joe Winters of Florida Avenue asked what the dispatch training resolution was.

Councilmember Conrad explained that the rescue squad trained the Police Dispatchers for CPR.

MUA Appointment

Wayne Weissman thanked Council for appointing him to the MUA Board and said he would work hard to do the best for the Township. He gave Council a brief work history.

Budget

George Doherty said last year the State fell short and said they needed to anticipate cuts. He said the Township should question the State when they made cuts. He asked if the budget was released yet.

Councilmember Beck said not yet. He said he hoped to have Senator VanDrew at a future meeting to help address some of the State matters.

Signs

Bob Rizzo said the real estate signs were all over the Township and stated there was an ordinance in place. He also mentioned he was upset with all the boats and cars for sale. He said there were still Christmas trees in his development not picked up.

Mr. Rizzo said he was glad to see Tony and Kathy back.

Outfall Pipe Project

Ed Butler said the Township had a 20 foot easement on his property. He said it was a dangerous situation. He said the new Engineers should look into the holes in the dunes and how it was washing away. He said if his foundations washed away the Township was liable also CAFRA should look into it. He said it changed with every storm and it should be looked at as an emergency condition.

Mayor Beck said the sand was washing away and creating pits, he agreed it should be looked at.

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Mandating Water Hook Up

Charles Brown of 122 Edna Avenue said he supported the water project and mandating hook ups. He stated he had iron on his driveway, windows and siding. He said \$1,600 was a good deal.

Resolution #2009-51 , 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." (Personnel & Fondacaro)
Councilmember Mazurek motioned to adopt the resolution, seconded by Councilmember Douglass.
The consent agenda was adopted by the following roll call vote: Councilmember Conrad, "yes", Councilmember Mazurek, "yes", Councilmember Douglass, "yes", Councilmember Lare, "yes", Mayor Beck , "yes".

CLOSED SESSION SEPARATE

Council returned to open session

Resolution #2009-52, Resolution Authorizing Increase for Non Union Employees
Councilmember Douglass motioned to adopt the resolution, seconded by Councilmember Conrad.
The consent agenda was adopted by the following roll call vote: Councilmember Conrad, "yes", Councilmember Mazurek, "yes", Councilmember Douglass, "yes", Councilmember Lare, "yes", Mayor Beck , "yes".

There being no further comment, Councilmember Douglass motioned to adjourn the meeting, seconded by Councilmember the meeting unanimously adjourned by verbal "ayes" at 9:55 p.m.

Mayor

Township Clerk

Approved: February 2, 2009