

Regular & Work Session Meeting Minutes - February 18, 2009

The regular meeting of the Township Council of the Township of Lower, County of Cape May, State of New Jersey was held on February 18, 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
Deputy Mayor Kevin Lare
Mayor Michael Beck

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

WORK SESSION

Update on Legal Matters - Martinelli Dispute, DEP Penalty re: Outfalls, Fandacaro v Township & COAH Update COAH

Solicitor Monzo said it had previously been reported on and the process is pertaining to a project that is dependant on a COAH Plan being prepared and submitted to the Council on Affordable Housing. The Township did solicit proposals for Planners to prepare a Fair Share Housing & Element Plan. One proposal was received and another had been submitted that day. They both would be presented to Council to review and make a decision by the March 2nd meeting. One was reviewed and was for a fixed fee to prepare the plan to be submitted to COAH either as a plan or with a Petition for Substance Certification. He said either would protect the Township.

Solicitor Monzo said Conifer Village was a project approved by the Planning Board also a pilot program approved by Council last year which was payment in lieu of taxes. It was a 90 unit age restricted low income housing unit on the corner of Townbank and Bayshore Roads. The project was contingent upon getting financing from HMFA which was requiring a Fair Share Plan be submitted to COAH by April 8, 2009. He said it was a tight time frame and hopefully the Planner selected could have it prepared. The process was it had to go through the Planning Board, a public hearing at the Planning Board, adoption, submit to Council and then to COAH.

DEP Fine Issue

Solicitor Monzo said the Township had received a fine of \$72,500 for the outfall pipe work being done along the Bay at the street ends. He said a hearing was requested with DEP to try and eliminate or reduce the proposed fines. He said emails had been sent to the Township Officials which appeared to authorize to move forward with some of the emergency work. He stated although the emails were not binding as a permit would be, he believed it was a mitigating factor to have the fines reduced.

Solicitor Monzo said a new proposal was submitted by Hatch Mott MacDonald with fixed fees. He said even though Hatch Mott MacDonald was the contracted Engineer, the recommendation was the project had fixed fees that varied from the contract rate and should be brought before Council for approval by resolution. He stated the scope of services should be spelled out and there would be a short contract to be added to the general services contract.

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Martinelli

Solicitor Monzo said there was dispute and a new item brought up by Martinelli who had done the work on the outfalls that DEP had stopped work on. He said they claimed they were due damages based on delays and the Township's failure to proceed. He said he looked at the contract and there were adequate safe guards and there was no recourse beyond being paid for the work done. He said he had more to discuss with Council in closed session.

Bennett's Crossing Project

Solicitor Monzo said the case had been dismissed by a Stipulation of Dismissal which had been agreed upon by all attorneys involved. He didn't believe the Township ever formally approved a Stipulation. He said after the last meeting he had received a letter from Fondacaro's attorney that said the Township had no right to stop the arbitration and if they didn't move forward they would file a motion in court to compel arbitration. He said the same day he received the letter he got a motion returnable on Friday the 20th to compel arbitration. He got consent of the opposing Counsel to extend 2 weeks to talk to Council about it.

Solicitor Monzo received a call from Judge Todd saying he wouldn't delay. He said they would file papers with a cross motion and he would talk more in closed session about it.

Mayor Beck asked if Council didn't waive it then who did?

Solicitor Monzo said it was discussed among Council to negotiate through arbitration subject to having a settlement agreement come back to Council and it never happened. He said there never was a resolution of Council to approve it.

Deputy Mayor Lare said it was reprehensible the Township had been in that position with the project and that the Township taxpayers would have to pay money to a contractor of that stature.

Deputy Mayor Lare said regarding the COAH Plan if the Solicitor or the Manager could reach out to the planners that would do the work and try to convince them to finish in 5 weeks and make everyone happy. He said also that would meet Conifer's deadline and protect the Township. He said he believed if they didn't have a plan it could also jeopardize the NPP Program.

Manager McPherson said that was correct the Township wouldn't receive any more money until they had a COAH Plan.

Deputy Mayor Lare said there was no harm in trying to expedite it.

Review of Mayor's Advisory Board Ordinance

Mayor Beck said the only way a person could be removed from the board would be due to missing meetings. He would like to add a provision that a member could be removed at the majority of the board members recommendation.

All of Council agreed.

Review of Consent and Regular Agenda Items

No Comments.

Public Questions on Consent Agenda and/or Regular Agenda Items

Fred Schmidt said he was present for Conifer Village and was glad to see things moving along. He said he would like to do anything to help.

Joe Winters asked if the engineering services were already paid for.

Manager McPherson said they were using Remington and Vernick's plan and had to add three additional pipes, also the Township had to apply for additional permits.

Mr. Winters asked if the material purchased would be used.

Manager McPherson said yes.

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Mr. Winters asked if the cost was for the drawing and permits.

Steve Sheftz asked if they were 3 additional new outfalls.

Manager McPherson said that was correct and explained the 3 additional pipes were found when the inspection had been done.

Consent Agenda

- Approval of Minutes February 2, 2009
- Res. #2009-67, Payment of Vouchers, \$4,017,313.87 (Bills for supplies, services, utilities, etc. required to be paid)
- Res. #2009-68, Resolution Authorizing Salary Increase for Class II Police Officers (Authorizing an increase to the hourly rate for Class II officers pursuant to their years of service)
- Res. #2009-69, Approval of 2009 Rotary Towing Licenses (Annual license for emergency towing Offshore Getty & Clarks)
- Res. #2009-70, Renewal of Trailer Park License for 2009 (Cape May Crossing annual renewal)
- Res. #2009-71, Authorization for Refund of Taxes (2 properties - overpayments by mortgage company)
- Res. #2009-72, Transfer of Appropriations, \$13, 750 (Transfer from certain line items with funds remaining to others with balances due)
- Res. #2009-73, Resolution Providing for the Combination of Certain Issues of General Improvement Bonds of the Township of Lower, in the County of Cape May, New Jersey Into A Single Issue of Bonds Aggregating \$8,800,000 in Principal Amount
- Res. #2009-74, Resolution Determining the Form and Other Details of \$8,800,000 General Improvement Bonds of the Township of Lower in the County of Cape May, New Jersey and Providing for Their Sale
- Res. #2009-76, Resolution Authorizing Permitting & Engineering Proposal for Bayshore Storm Sewer Outfall Extensions in the amount of \$64,950 (Hatch Mott MacDonald - 12 outfall pipes, NCM & Villas)
- Ord. #2009-03, An Ordinance Amending the Code of the Township of Lower, Section 3-41, Mayor's Advisory Board, 1st rdg. - 2nd rdg. March 16, 2009 (Reestablishes the Mayor's Advisory Board with 9 members)

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

Regular Agenda

Res. #2009-75, Appointment of Zoning Board Alternate 3 Member (Vacancy Term exp. Dec. 2010)
Deputy Mayor Lare motioned to adopt the resolution, seconded by Councilmember Conrad. The resolution was adopted by the following roll call vote: Councilmember **Conrad**, "yes", Councilmember **Mazurek**, "yes", Councilmember **Douglass**, "yes", **Deputy Mayor Lare**, "yes", Mayor **Beck**, "yes".

Ord. #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, was presented for second reading and final adoption. The Clerk announced the ordinance was posted and published to law.

Mayor Beck opened the meeting for comment on the ordinance and asked that comments be kept to a 5 minute

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range because he would like to hear what everyone had to say.

Ed McGhean of 21 Elwood Road, said he owned his property since the early 80's and asked if there were any plan for water there. He was told approximately 2 years. Then in 1998 he moved here permanently and asked again about water and was told a couple of years. He stated and still no water.

Mr. McGhean said he later joined the Townbank Property Owners Association and was now on the Board of Directors. He said he had been involved in a few things and water was a big problem that something should be done about. He stated there were ways around the cost.

Mr. McGhean said he spent around \$600 - \$700 a year on potassium chloride for his water filter. He didn't understand why people wouldn't want to hook up.

Tony DeAngelis of Cape May Beach, said he understood South Jersey Gas was putting in lines and thought maybe they could coordinate with the MUA and work together to save on the costs.

Councilmember Mazurek asked if they checked with South Jersey Gas to see if they were interested.

Steve Sheftz of Townbank, said water was life's blood you couldn't live without it. He said there were various categories of contaminants and said Townbank had VOC's. He said the County had some funds to do a study of about 10% of Townbank and he showed on a map the contaminants above and below limits. He said they had concerns on the ability to pay and there were alternatives to that.

Mr. Sheftz said he felt that those who had recently put in wells should have an extension of time and nowhere in Lower Township was there a greater need for water than Townbank.

Ed Butler, 7 Delaware Bay Drive, said Mr. DeMarcantonio was doing a good job and it would be an accomplishment to have mandatory hook up. He stated to let people know how it would operate and when it was in place. He stated when Mr. Sheftz was on the MUA Board he got in touch with HMFA and said there were alternate programs that may be helpful to some people.

Bob Monroe of Bayside Village asked if they would be getting water there.

Mayor Beck said it would be for those who had lines in front of their home. He said if he didn't have a line in front of his house the MUA would have to run lines which could be years.

Mr. Monroe said he had 5 new well since he lived there for 30 years.

Mayor Beck said they needed mandatory hook up to move forward.

Mike DeMarcantonio said it wasn't going to happen overnight he said it had been neglected for years. He said there was a map on the back wall of the proposed projects and the Millman Tank. He recited some of the lines where they would start and connect along the way. He said it would cost 2 - 3 million if they didn't have mandatory hook up they would get no funding. He said the USDA announced there was 58million in projects in New Jersey. He said the MUA would also start having their crews doing water line installations and wasn't sure why they stopped doing it. He mentioned Seashore Road may never have water.

Colleen Hughes stated she had a contaminated well. She thought the 5 years to pay back was good and felt you needed safe clean water and mentioned she had a filtration system on her well. She said she was spending money on bottled water which went against her grain as she was an environmentalist.

Janet Pitts, President of the Lower Township Taxpayers Association said the stimulus package may contain money for infrastructure and maybe the Township could get some funding.

Mayor Beck agreed to dialogue with some of the representative in Trenton.

Mr. MacDonald of Bayside Village said Council had his vote for mandatory hook up.

Blair Hansen of Weeks Landing Road said he was against mandatory hook up. He didn't want any more connections to the government and felt it should go to the areas with problems.

Mayor Beck asked what he would do if his well went bad.

Mr. Hansen said he would drill another well.

Mayor Beck said his fear was that the Township may have a cancer cluster down the line. He felt if the State at

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sometime came and said they needed everyone off the wells it would be a problem if the infrastructure wasn't in place.

Councilmember Mazurek said he understood Mr. Hansens concerns but said the people giving the money do not give the Township any choice, it's yes or no.

Joe Santore said he was from Philadelphia and had a well with no problem but would connect tomorrow if he could. He didn't see the problem when it was done for the benefit of the people and children and Council had his vote.

George Doherty said the water from the MUA was also well water. He read some quotes from Mayor Beck in the past.

Mayor Beck said he never hid the fact he wanted mandatory hook up even when he was on Council previously. He said people needed safe drinking water.

Mr. Doherty said he felt the Mayor may have some misinformation. He said you could go deeper with your well and said all of Lower Township was on the Kirkwood Cohansey aquifer. He said it was the best and purest water and there was plenty of it.

Councilmember Conrad asked what would cost more.

Mr. Doherty said it would be \$1,600 to connect, then to trench and hook up another \$2,800 for plumber and then if they had to put in sewer more cost.

Mayor Beck said the MUA said they would work with anyone who couldn't pay.

Mr. Doherty asked why the connection fee was higher for commercial properties and said it wasn't fair. He asked why wasn't the Chamber of Commerce sticking up for them. He said the cost could create a problem.

Mr. Sheftz said the alternative plan started here in the Township when he got Assemblyman Gibson to approve a bill that would give 0% interest, a 10 year payback and you could borrow all the money for the water hookup.

Councilmember Douglass mentioned he did receive an email of objection to the mandatory hookup from a resident on Seashore Road.

Mr. DeMarcantonio said it would be awhile before Seashore Road had water.

Rachel Hanson said she owned a lot on Ernest Winfield Drive and was getting ready to build and said it would cost her a lot if she had to put in a well and then possibly having to hook in to the water later. She also asked if the monthly rates of the water would be capped or controlled.

Mayor Beck said her area would not be likely to get water for 15 years and agreed that it could be expensive for her down the line.

Bob Rizzo of Mickles Run thanked Council and the Mayor for doing the right thing.

Lou Marcucci of the Villas said he didn't have a water line down his street, but could he start paying now?

Mayor Beck said "no".

Wayne Weissman of Villas said it was time to get out of the stone age.

George Doherty said it cost less to put in a well.

Carl Behrens of North Cape May said he was strongly in favor of mandatory water connection it was an investment in your community. He mentioned going deeper didn't prove the water was better you could find salt water intrusion.

Lisa Church of Erma said a dentist in the area said the teeth were bad here due to no fluoride in the water.

Mayor Beck closed the public portion.

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

Ord. #2009-02, An Ordinance Amending Chapter 101, Public Access to Records, of the Code of the Township of Lower, Reducing Photocopying Fees, (Reduces fee for copies of public records to 15 cents per copy) was presented for second reading and final adoption. The Clerk announced the ordinance was posted and

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published according to law.

Mayor Beck opened the meeting for comment on the ordinance.

Ed Butler thanked Council for considering the ordinance.

Mayor Beck closed the public portion.

Councilmember Mazurek 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", **Deputy Mayor Lare**, "yes", **Mayor Beck**, "yes".

Administrative Reports

Personnel Action Report

Department Reports 2008 Year End - CFO - January - Animal Control, Construction Official, Dog Licensing, Fire Safety, Municipal Clerk, Municipal Court, Police, Public Works, Tax Collector, Vital Statistics

Council Comments

Energy Conservation

Councilmember Conrad said Deputy Mayor Lare, himself and Manager McPherson attended a meeting on an energy audit. They found out good information on saving energy and costs for the Township. He mentioned maybe even having solar panels someday.

Mayor's Advisory Board

Councilmember Mazurek said the Mayor's Advisory Board was to be a positive proposal for the Township. He said he felt limiting the number of members could be negative. He felt those who were not chosen may come away with a negative feeling. He didn't want a positive to be turned into a negative.

Mayor Beck said he felt by keeping the number down that gave the ability to have people's voices heard. He said originally there were 25 members and felt that was too many. He said the Township went to having the meetings on TV and people held their breath about it and now it's been done for years and going well.

Mayor Beck said the board would be as good as the people on it. He was glad to see the number of people applying and suggested why not have a Ward Board to come up with ideas. He said people getting involved meant good things would come.

Councilmember Mazurek said he felt the people needed to hear the Mayor's thoughts for the board.

Councilmember Douglass said Council had only one choice and thought maybe Council could choose one business owner and one resident from their ward. He said a lot of applications had been coming in.

Deputy Mayor Lare said 25 members were too many and didn't think you couldn't function with that many. He said the ordinance was structured so each Councilmember had a pick, they were looking for production.

Income Tax Assistance

Deputy Mayor Lare said Tuesday through Thursday from 9:00a.m. to 12:00 p.m. at the Social Services Building free help was available with income tax returns if your income was under \$50,000.00.

Energy Conservation

Deputy Mayor Lare said the Township was in the process of having an energy audit done to help plan for the future.

Zoning Board Appointment

Deputy Mayor Lare congratulated Steve Komar on his appointment to the Zoning Board.

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8:25

Public Comments

Mandatory Water Connection

Pete Bitting of Villas and the Lower Township MUA Chairman thanked Council for passing the ordinance and it had been a fight for 5 to 6 years and finally it was done.

Ponder Lodge

Barbara Skinner said she was in the middle of reaching out to many Universities and the State about Ponder Lodge. She said some organizations were still interested in the large building. She mentioned some of the various things it could be used for as environmental groups, etc.

Property Maintenance

A resident asked how something was to be proposed to Council. He mentioned he liked to take walks and saw a lot more than if he were driving. He said some people take care of their homes and others didn't care. He asked if something could be done about enforcing clean up of the properties.

Mayor Beck suggest they meet with the Manager to discuss things further.

Curbing Dogs

Gloria Deal of North Cape May wanted to discuss the problem of dogs going to the bathroom on her lawn. She said she had to call the police just to make a record of dog feces on her lawn. She said she had company visit and it had created a problem and felt something needed to be done. She said she would pay for a sign if the Township would put it up.

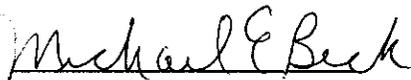
Mayor Beck said he would have a sign put up for her.

Bob Rizzo said the gentleman with the property maintenance problem should contact Code Enforcement. He mentioned the ceremony at Township Hall honoring David Douglass was very nice.

Resolution #2009-77, 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. 1-L4-12 (Attorney Client/Litigation - J. Jackson, Fondacaro v. Twp., Martinelli Dispute & M. Vitellil)

Councilmember Deputy Mayor Lare motioned to adopt the resolution, seconded by Councilmember Mazurek. The resolution was adopted by the following roll call vote: Councilmember **Conrad**, "yes", Councilmember **Mazurek**, "yes", Councilmember **Douglass**, "yes", **Deputy Mayor Lare**, "yes", **Mayor Beck**, "yes".

Council returned to open session and there being no further comment, Councilmember Mazurek motioned to adjourn the meeting, seconded by Councilmember Douglass the meeting unanimously adjourned by verbal "ayes" at 9:25 p.m.


Mayor


Township Clerk

Approved: