

Work Session & Regular Meeting Minutes – December 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 December 21, 2009 at 7:00 p.m. in the meeting room of the Township Hall, 2600 Bayshore Road, Villas, New Jersey.

The Clerk announced 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
Deputy Mayor Kevin Lare
Mayor Michael Beck

Absent: Councilmember Douglass

Also present: Anthony Monzo, Solicitor, Kathleen McPherson, Manager and Asst. Clerk Horwath

Certificate of Recognition to the Lower Cape May Regional Girl's Field Hockey Team

Mayor Beck presented the Coach a certificate of recognition for the accomplishments of the team.

WORK SESSION

Request to Change Ordinance to Permit Flea Markets – Lou Ginsberg

Mayor Beck invited Lou Ginsberg up to speak on the Flea Market.

Lou Ginsberg had been delays in getting the lease from the County for one reason or another. He met with the head Administrator Steven O'Conner and he turned it over to his assistant Brad Rosenthal. Mr. Rosenthal's concern was he asked if there was an ordinance in place before he did a lease.

Mr. Ginsberg said he told Mr. Rosenthal that Council had discussed the issue of an ordinance after he obtained a lease from the County so he said he was in a catch 22. He said Council could provide a letter with the intention of passing an ordinance. His hope was to get this going and operating in April maybe in May.

Manager McPherson said there was a process for changing the ordinance and it had to be referred to the Planning Board first and the board would make a recommendation to Council as to what should be included in the ordinance. She said the last time they spoke he was supposed to have gone for a use variance rather than changing the ordinance.

Manager McPherson said it could be made a permitted use and the process to get there was to go to the Planning Board to make the recommendations to Council. She said the ordinance would have first, second and a public hearing on the ordinance.

Mr. Ginsberg asked what should be done first.

Mayor Beck said if they had known a year ago that was what would be required they could have been working on it.

Mr. Ginsberg said the County was ready to go with the lease but didn't want him to get stuck if the Township wasn't doing the ordinance. He wasn't sure about moving forward with the site plan if he didn't have some concrete knowledge that he could move forward, so he didn't know what came first.

Mayor Beck said the Planning Board should be the first step.

Councilmember Mazurek said if Mr. Ginsberg could get together a presentation or the Planning Board's next meeting January 14th they could take a look at it and give Council a recommendation for the 1st

Work Session & Regular Meeting Minutes – December 21, 2009

meeting in February which would be 1st reading and the 2nd reading could be the second meeting in February which would be the fastest way.

Mr. Ginsberg said some things had been discussed prior about not being there at night and being there 3-5 days a week.

Mayor Beck said he didn't see any major issues with it.

Manager McPherson said she would send it to the Planning Board.

Mr. Ginsberg said he would like to sit down with the Manager some day this week and see what steps needed to be taken to start the process.

Updates from Solicitor on Legal Issues

Solicitor Monzo gave an up date on pending matters and some litigation issues. He started with Bennetts Crossing and said they were headed to a binding arbitration hearing with a claim of \$290,000.00 in damages which the contractor was seeking. The Township went back to court and were still attempting to resolve it.

Solicitor Monzo did file summary judgment motion, it was denied because the judge felt there was still some factual issue that needed to be resolved through testimony. They were now preparing for trial that was scheduled in February and some additional facts were uncovered which strengthens the Township's claim against Fondacaro. He said there were pending claims against the Bonding Company with exceptions that were negotiated in the takeover agreement.

Solicitor Monzo said the second matter was a Notice of Violation from DEP on the Frances Avenue Outfall Project that was started in 2008. He said it was started at the direction of the former Township Engineer without any CAFRA permit or Riparian License to utilize the land at the end of Frances Avenue that was owned by the New Jersey Natural Land Trust.

Solicitor Monzo said the Township filed an appeal of that notice and based on some discussion with a representative of DEP there was an inclination that the penalty may be negotiated. He said the process was slow and it was just assigned to a Deputy Attorney General. He said the permits were received for the outfall pipes at Francis Avenue and the 15 other locations he mentioned the Riparian License had been approved and everything is on target to go out to bid.

Solicitor Monzo said they were looking to award the bid in early January. He said the prior contractor was in the middle of the job when DEP stopped the work. He said the contractor had been paid to date and then had to demobilized they negotiated a change order for about \$17,000.00 and had been off the job since. The contractor had brought a claim against the Township for loss opportunities and the demobilization which they had already been paid. He said therefore the Township was holding the former engineer responsible because he put it out to bid without permits and due to those actions this lawsuit arose so the Township was seeking indemnification for this as well as Francis Avenue fines if there were any.

COAH

Solicitor Monzo said the last update was COAH. He said the Township had done a great job in hiring a Planner. The Fair Share Plan was accepted by Council submitted to COAH which protected the Township from builders remedy suits. He said then the Township filed for substantive certification and also adopted a COAH ordinance.

Mayor Beck said Solicitor Monzo did a fantastic job over the past year.

Council Comments on the Consent Agenda

No comments from Council.

Work Session & Regular Meeting Minutes – December 21, 2009

Public Comment on the Consent Agenda

Joe Winters of Florida Avenue asked if the Township was required to have a Department Army Authorization?

Manager McPherson said we already had it.

Bill Greenfield asked about Resolution #323 asked if was going to vacate any Township land.

Mayor Beck said "no".

Mr. Greenfield asked if that was going to be reviewed by anyone so when the bulkhead was put in it wouldn't negatively impact property owners.

Mayor Beck said the DEP would be involved.

Solicitor Monzo said the Engineer was reviewing it as well.

Mayor Beck said Resolutions #324 and #327 were two properties that were being torn down. He said the removal of the properties would improve the appearance for the neighbors who lived there.

CONSENT AGENDA

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| Approval of Minutes | December 7, 2009 |
| Res. #2009-319, | Payment of Vouchers, \$732,167.94 |
| Res. #2009-320, | Authorization for Refund of Taxes (7 properties - overpayments due to newly granted senior/veteran deductions) |
| Res. #2009-321, | Certification of Lot Clearing Charges To The Tax Collector (2 properties) |
| Res. #2009-322, | Transfer of Appropriations, \$188,500 (From Emer. Man., Tipping Fees, Gas & Insurance TO Bldgs & Grounds, Engineer, Assessor, Electric, Street Lighting, Terminal Leave, Recreation, Demolition, & Cap. Imp. Fund & Public Works) |
| Res. #2009-323, | Resolution Approving a Memorandum of Understanding and Revocable License Agreement By and Between the Township of Lower and Certain Homeowners Fronting on Beechwood Avenue. |
| Res. #2009-324, | Acceptance of Bid and Award of Contract for Demolition of 247 Breakwater Road (Bayshore Landscaping, \$6480.00) |
| Res. #2009-325, | A Resolution Requesting Release of Performance Guarantee for Cape May Estates Subdivision; Block 748, Lot 24, Escrow #P99-08-08 |
| Res. #2009-326, | Resolution Approving Settlement of Tax Appeal Litigation Known as <u>Harold F. Read and Helen E. Read v. Lower Township</u> |
| Res. #2009-327, | <i>Acceptance of Bid and Award of Contract for Demolition of 115 W. New Jersey (Bayshore Landscaping, \$6,990.00)</i> |
| Ord. #2009-15, | <i>An Ordinance Approving a Grant of Conservation Restriction/Easement Between the Township of Lower and the DEP for Public Access to the Waterfront From the Street Ends Included in the Outfall Pipe Maintenance Project, 1st rdg. (2nd rdg. & public hearing Jan. 4, 2009)</i> |

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

Regular Agenda

Resolution #2009-328, Payment of Voucher, \$300.00

Work Session & Regular Meeting Minutes – December 21, 2009

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

Ordinance #2009-14, An Ordinance Amending Ordinance #2009-08, Salary and Benefit Ordinance for the Township of Lower, was presented for 2nd reading and public hearing. The Clerk announced the ordinance was posted and published according to law and copies were available in the Clerk's Office.

Mayor Beck opened the meeting for comment on the ordinance.

There were no comments on the ordinance.

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

Administrative Reports

Personnel Action Report

November Reports – Animal Control, CFO, Construction, Dog Licensing, Engineer, Fire Safety, Municipal Clerk, Municipal Court, MUA, Public Works, Tax Collector, Vital Statistics

Council Comments

Councilmember Conrad wished everyone Merry Christmas and Happy New Year and God Bless.

Councilmember Mazurek said the same thing and hope next year was better than this year.

Deputy Mayor Lare also wished everyone Merry Christmas.

Mayor Beck announced upcoming events in the Township. He wished the residents Merry Christmas and said to keep the service people in their prayers over the holiday. He thanked the Township works for their work with the snow removal. He mentioned an email from a resident regarding the trashmen and what good work they did.

Public Comment

Joe Winters asked why Mr. Ginsberg had to get permission from the County to have the flea market.

Councilmember Conrad said the portion of land he wanted to use was County owned. He said he wanted to use the parking lot in front of the Everlon Building.

Solicitor Monzo said the Everlon Building was carved out and the County retained jurisdiction over it.

Mayor Beck asked if that was because of the problems with the building.

Solicitor Monzo said "yes" there were problems there.

Mayor

Township Clerk

Approved: January 4, 2010