

Regular & Work Session Meeting Minutes - March 15, 2010

The regular meeting of the Township Council of the Township of Lower, County of Cape May, State of New Jersey was held on March 15, 2010 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

Proclamation - Sexual Assault Awareness Month, April 2010

Mayor Beck read the proclamation for Sexual Assault Awareness Month.

WORK SESSION

Change of Meeting Date from April 5th to March 29, 2010

Mayor Beck said they had to change the date due to Council would not have a quorum for the April 5th meeting.

Mayor s Advisory Board - Yearly Update

Mayor Beck said it was the one year anniversary of the Mayor s Advisory Board and he was thrilled with all the work they had done.

Eric Simenson introduced the Mayor s Advisory Board members present and wanted to summarize what the board had accomplished this past year. He said they had the website expansion project, monthly newsletter that the public could sign up for through the website. He said another program was the community volunteer workforce which were mostly retired volunteers.

Mr. Simenson mentioned the Fishing Creek School Restoration project which was currently underway and they were accepting memberships. They also had the cops stop program which encouraged communication between business owners and the police. He said the board had sent a memo to Mayor and Council about the 2010 budget and had asked they keep the local purpose tax at its current level with no increase. He said ongoing projects were the Township Heritage Wall to provide history, documents and pictures that pertain to the history of Lower Township that could be placed in Township Hall. He said the board would also like to help with the specific design of the board and commission applications.

Mayor Beck said when he and Deputy Mayor Lare ran for office one of their goals were to have good people involved. He said he attended the MAB meetings and knew how hard they worked and appreciated their efforts.

Regular & Work Session Meeting Minutes - March 15, 2010

Review of Consent and Regular Agenda Items

Fondacaro Settlement

Deputy Mayor Lare said maybe it would be appropriate for the Solicitor to give an overview of the Fondacaro case. Mayor Beck said the day after the election he and the Deputy Mayor came down and sat with the Township Manager and said it would probably cost between \$100,000 & \$ 200,000 for the lawsuit. He said the Solicitor had some good news regarding the case.

Solicitor Monzo said without going through the whole history of the case there was a resolution on the agenda approving the settlement of the case. He said there were 2 settlement agreements one with Fondacaro and one with International Fidelity Insurance Company which was the Surety Company that bonded the project. He said when he came into the case it had been dismissed and the case was put into arbitration and Fondacaro was seeking damages up to \$290,000.00.

Solicitor Monzo said the mediator suggested a settlement because there was some liability due to Fondacaro from the Township. He said they got the case back in court and attempted to resolve it. He said while preparing for trial they were able to convince International Fidelity even though they weren't a party in the case there was significant exposure to the extent they were able to successfully assert claims against Fondacaro which was a bankrupt company. He said they never had the ability to recover anything from Fondacaro, their main objective was to prevent the payment of any money to Fondacaro.

Solicitor Monzo said International Fidelity agreed with the Township's position and stepped in and worked out an agreement with Fondacaro's attorney for some payment of legal fees. They also worked on a settlement between all three parties that would dismiss all claims without any payment by the Township. He said the dismissal was without prejudice to the Township's claims they may have against third parties.

Solicitor Monzo stated in the course of preparing for trial they discovered there were several overbillings for electrical work. The change orders presented to the Township by Fondacaro were higher than the change orders Fondacaro presented to the electrical contractor by approximately \$55,000.00. He said they provided the County Prosecutor's Office with all of the information and it is under investigation and had nothing to do with the Township's settlement. He said they were considering the resolution because one of the conditions was that a resolution be adopted within sixty days from the date of settlement and he wanted to make sure the Township fulfilled all of its obligations to finalize the settlement.

Mayor Beck told Solicitor Monzo it was a job well done.

Public Questions on Consent Agenda and/or Regular Agenda Items

Fondacaro Settlement

Ed Butler asked Solicitor Monzo if it was a wash. He also asked if there was a lawsuit for \$55,000.00.

Solicitor Monzo said it wasn't a lawsuit, it was a criminal investigation which could result in some restitution.

Fred Long of Cold Spring said the settlement was a great thing. He had a question for the Solicitor in signing the release was it still opened that they could be litigating whether or not the agreement was valid because of the activity going on with the Prosecutor's Office.

Solicitor Monzo said they could file a motion to vacate the settlement, but there were no grounds for that.

Mr. Long asked if there would be legal costs involved if they filed a motion.

Solicitor Monzo said he felt that was the type of motion you could get attorney fees for. He said it was being used as a threat.

Resolutions on Township Website

Mr. Long asked about Resolution #2010-94, Appropriation Transfers, and asked if it was possible to have the resolutions put on the website prior to the meeting.

Regular & Work Session Meeting Minutes - March 15, 2010

Mayor Beck and the Manager said they would do it.

Clerk Kammer explained the resolutions would be marked draft because once they were out there and something was pulled at the last minute there was no way to get it back.

Manager McPherson said there would have to be a cut off for the agenda.

Janet Pitts, LTTA asked about the appropriation transfer resolution and questioned the amount for terminal leave and how many people that was.

Manager McPherson said that amount was transferred to terminal leave, it was being put into the reserve.

Ms. Pitts said it wasn't for any certain people yet.

Manager McPherson said there was only one person this year, but next year there were a lot of people eligible to retire and they were trying to build up the reserve.

Consent Agenda

Approval of Minutes	March 1, 2010
Res. #2010-90	Payment of Vouchers, \$335,463.44
Res. #2010-91,	Resolution Amending the Annual Meeting Schedule (Changing Apr. 5 to March 29)
Res. #2010-92,	Authorization for the Refund of Taxes (2 refunds - duplicate payments)
Res. #2010-93,	Authorization for the Payout of Accumulated Compensatory Time (M. Szemcsak \$1,756)
Res. #2010-94,	Transfer of Appropriations, \$375,000 (From Clerk, Treasurer, Manager, BOCA, DPW S & W, Insurance, Heating Oil, Gas & Tipping Fees OE to Legal & Terminal Leave)
Res. #2010-95,	Acceptance of Bid & Contract Award for Roofing and Exterior Repairs of Public Safety Building (Capri Construction \$141,355)
Res. #2010-96,	Resolution Authorizing Settlement of Litigation Known as <u>Fondacaro Companies, Inc. v Lower Township v. Van-Note Harvey Associations and Bruce S. Graham, P.E.</u>
Res. #2010-97,	Issuance of 2010 Limousine & Operator s Licenses (Shore Limo - 3 Vehicles - 2 Drivers)

Councilmember Mazurek 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.

Administrative Reports

Personnel Action Report

February Reports Animal Control, Construction, Dog Licenses, Engineer, Municipal Court, Municipal Judge, Police, Tax, Collector, Treasurer, Vital Statistics

Council Comments

Regular & Work Session Meeting Minutes - March 15, 2010

Census Questionnaires

Councilmember Conrad said the Census paperwork was out and asked everyone to make sure they fill it out and mail it, it only took three minutes to do it.

Richard Teitelman Band

Councilmember Conrad said the Richard Teitelman Band would be in New York at the St. Patrick's Day Parade and the kids had to earn the money for the trip.

Water Problems from the Storms

Councilmember Conrad said the Township was under water and he would like to push the County to drain and let some of the water out of Cox Hall Creek and Fishing Creek. He said New York emptied their reservoir to reduce flooding. He said the Township was almost at sea level and all the marshes were filled up with water and back filling. He said it was common sense if they emptied them where they were supposed to be that water would go away. He said to open the flood gates and let some water out.

Water Supply for the Township

Councilmember Mazurek said he and the Mayor attended a County meeting last week concerning the fifty year plan for water for the County. He said Lower Township was a big part of it since we were having the most trouble with the water compared to other areas. He said at the meeting they gave different scenarios that the Township would have to be looking at in the future to protect the water supply. He said they were planning 50 years ahead and we needed to do some things to ensure water would be here in the future.

Richard Teitelman Band

Councilmember Douglass said the Teitelman Band had been going to New York for years and he had gone with the band 6 times and it was an outstanding event.

Pumps

He said Mr. Winters had asked him about the pump regarding the automated system and alarm. He said the County was looking into that and thought it was a good idea but they had were checking into prices.

Tiger Basketball Team

Deputy Mayor Lare said he wanted to congratulate Pat Holden and the Tiger Basketball team.

Budget

He said March 29th they would be introducing the budget. He said he would like to hear Mr. Long's ideas for the budget and anyone else. He said if there were any changes to be made in the budget it would be easier to change them now instead of after introduction because they would have to reintroduce it.

Manager McPherson said they would have to do an amendment.

Mayor Beck said that was fine he didn't have a problem with it. He said until they saw what the Governor had to say and what he had in store for the municipalities, things could change. He said they may have to go and make even more cuts if what the Governor brings is drastic to the towns and he felt it would be. He said everyone would have to bear the burden.

Census

Mayor Beck said the census was important. He said if people weren't counted that cut the Township out of some fund they maybe eligible for. He said it was important that everyone cooperated and filled out the papers and get an accurate count.

Public Comments

Joe Winters of Florida Avenue asked if the County could pull the pump out that didn't work.

Mayor Beck said he would ask the County about it.

Outfall Pipe Project

Mr. Winters said he liked to ask where they stood on the outfall project.

Manager McPherson said they had an engineers report and she reviewed what it said.

Regular & Work Session Meeting Minutes - March 15, 2010

Mr. Winters asked when the job would be completed.

Manager McPherson said before April 15th.

Gary Douglass said they were on schedule with the project.

Budget

Ed Butler asked the worse scenario if the Township received nothing from the State what would each Councilmember consider to reduce the budget.

Mayor Beck said they couldn't discuss about personnel, that was a Council decision. He said Mr. Long mentioned across the board reduction of the OE by 10% and that was about \$105,000.00.

Manager McPherson said that was the departments expenses. She said that was the only OE you could consider.

Mr. Butler said the OE that was left at the end of the year was always transferred.

Manager McPherson said most departments spent their OE.

Mr. Butler said if there had to be a special meeting to discuss it he would like to have the public input on it.

Mayor Beck said it was an unique year and it wasn't that they wanted to avoid their input.

Mr. Butler said the residents of the Township can't keep floating things with taxes.

Board Appointments

Fred Long of Cold Spring said he would like to offer a suggestion to Council for the board appointments. He said one thing they would be discussing at the next Mayor's Advisory Board meeting was the Citizens Service Act which they had a sample form that could be customized to what you wanted on your application. He added that the board vacancies should also be posted on the website.

Mr. Long said the MAB had sent the Mayor a recommendation that the municipal levy be held where it was last year. He felt it could be accomplished a couple ways. He said last year the Township paid \$379,000 in overtime. He said in some cases maybe it should have been an emergency appropriation situation. He said the Township had done a good job of keeping track of it.

Mr. Long said surplus was another area that could be looked at. He said the year end number of surplus for the past eight years averaged at about 3 million.

Manager McPherson said it was in the fund balance.

Mr. Long said in the past when he spoke about OE he didn't realize that insurance cost were included in there which was a big item. He said if he was told to run his business with 5% than last year, he said it would get done.

Mayor Beck said they were looking closely at overtime, one thing was when you lower the number of the workforce sometimes you end up paying overtime in other departments.

Manager McPherson revenues had been going down and if more of the surplus was applied to the budget that money wouldn't be made back by the end of the year and the surplus starts going the other way.

Mr. Long said when you look at the total reserve left over that wasn't paid out of an appropriation it came up to almost one million dollars.

Manager McPherson said it isn't one million because in the beginning of the year bills were coming in from the prior year. She said it wasn't black and white and they had to budget for the worse case.

Manager McPherson further explained how various things came up through the year that had to be addressed.

Jack Sparks said there was a situation in the country people were being thrown out of office and it all had to do with taxes. He said the people who worked for the government their pays steadily increased and everyone who didn't their earnings went down and that wasn't how it was supposed to work. He said he knew there were contract with the employees and knew there was a 3.75% increase for the people in Township Hall and the same for the police only it was higher because they had seniority issues. He said he was told some were making 17% or 18% more, it didn't make any sense. He was aware there was an attempt to negotiate with the police and they didn't want to hear it.

Mr. Sparks said the employees should be asked to cut their percentage increase. He said 51% of the kids in school

Regular & Work Session Meeting Minutes - March 15, 2010

their parents were below poverty level. He reviewed the different income qualifications that kids were eligible for meals in school and sometime that's the only time the kids ate. He said people would say they like the people in office but they really didn't. He said Council needed to do what they had to.

Mr. Sparks felt the auditor wanted the Township to have a big surplus to make him look good.

Bob Rizzo said the Solicitor had done a good job and deserved a hand. He told the Mayor Lower Township was more open and above board than almost any other municipality in Cape May County as far as the public getting information.

Storm Clean Up

He said public works had been overwhelmed with all the trees and debris from the storms than they could handle.

Joe Hauser

He mentioned attending Joe Hauser's viewing and said to take a minute to remember him.

Mayor Beck said Mr. Hauser did a lot for the Township and wasn't afraid to speak his mind but he did have a soft side to him and cared about people.

Storm Clean Up

Joe Winters asked about skipping recycling and go back to every other week until they were caught up on the tree pick up.

Councilmember Conrad thought it was a good idea.

Gary Douglass said people were used to every week recycling.

Manager McPherson said the tipping fee was down by having weekly recycling.

Mr. Douglass said the branches were about 30% picked up. He said the spring branch pick would be delayed a month.

Mayor Beck asked Mr. Douglass what he would recommend.

A discussion ensued regarding the clean up, overtime and possibly declaring the storm an emergency.

Councilmember Douglass asked Gary if people could take the branches directly to the MUA.

Mr. Douglass said he didn't think their insurance would allow that.

Councilmember Conrad asked Mr. Douglass if he was recommending another weekend for branch pick up.

Mr. Douglass said it was taking one truck a day on a street to clean up the branches.

Mayor Beck said he would leave it up to Gary to make the call.

Mr. Douglass said he would meet with the Manager to discuss it.

Mr. Winters asked if the overtime offset the tipping fees.

Deputy Mayor Lare asked if FEMA would pick up the cost.

Manager McPherson said they were keeping track of the hours.

Councilmember Conrad said there was a good chance FEMA might reimburse the Township.

Mayor Beck said it wasn't a guarantee.

Janet Pitts said all the branches on her street were causing notes and water was backing up in yards. She said she would prefer to clean up the branches and hold off on the recycling.

Mr. Douglass said on the weekend they could get all the trucks and workforce out there.

Colleen Hughes felt weekly recycling was needed.

Resolution #2010-98, 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

Councilmember _____ motioned to adopt the ordinance, seconded by Councilmember _____. 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.

Regular & Work Session Meeting Minutes - March 15, 2010

Council returned to open session and there being no further comment, Councilmember Conrad motioned to adjourn the meeting, seconded by Councilmember Douglass the meeting unanimously adjourned by verbal ayes at 8:12 p.m.

Mayor

Township Clerk

Approved: March 29, 2010