

Regular & Work Session Meeting Minutes - December 6, 2010

The regular meeting of the Township Council of the Township of Lower, County of Cape May, State of New Jersey was held on December 6, 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, Kathleen McPherson, Manager and Asst. Clerk Horwath

Presentation in Memory of Robert C. Idler

Mayor Beck read a plaque that would be displayed in the construction building in memory of Mr. Idler. He mentioned some of the work he had done in the past and what an asset he had been to the Township and he would be missed.

WORK SESSION

Discussion on Township Solar Project

Mayor Beck said Matt Eckert from the Lower Township MUA had been present to explain and go over some things. Mr. Eckert was here on behalf of Mike DeMarcantonio. He referred to a memo that Council had received from Mr. DeMarcantonio and there were five different options for implementing a solar project of various size and scope. He said what they found were the buildings that the Township had that used the most demand for electricity or the square footage to put solar panels on had roofing in the poorest condition. He said the Township would gain new roofing however due to the cost of that there would not be any savings.

Mr. Eckert felt the simplest project to start with would be the Milkman Center and the Sign Shop at DPW the roofs were in good condition and there would be no cost there and a savings on the electric. He said they estimated the kilowatt generation per hour was about 13 cents at those two locations and it could be reduced to about seven cents per kilowatt per hour. He said that would generate savings for the Township at no cost.

Councilmember Conrad said when he attended the meeting two separate options were discussed. He said Mr. DeMarcantonio said if Township building was done and the Annex building they could totally power the Recreation Center.

Mayor Beck thanked Mr. Eckert and Mike DeMarcantonio for the work they had done.

Mayor Beck said they would move ahead with the project.

Follow Up on Nature Conservancy s Offer to Donate Land

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Manager McPherson said when they had initially spoke about the offer Councilmember Mazurek said there were pipes sticking up out of the ground. The pipes had since been removed by the Nature Conservancy. Council agreed to move ahead with the offer.

Request of Recreation Advisory Board to Close Outside Area of Recreation Center at Night

Mitch Penn. and Debbie Johns said the Recreation Advisory Board had requested the outside area be closed from dusk to dawn due to recent problems with people hanging outside the recreation center. They felt it was one area where they could assist the police department in monitoring the situation and it had spilled over to the Library and the neighborhood.

Debbie Johns said from April to October it would be closed at 9:00 p.m. and October to April 6:00 p.m. and that was what the Recreation Advisory Board requested and hoped Council would consider it.

Councilmember Conrad said he felt it was all right with him and felt it was a safety and liability issue.

Councilmember Mazurek was in agreement.

Councilmember Douglass was in agreement and felt it would be a deterrent.

Mayor Beck said something had to be done but he wanted to look at it a little bit. He asked what was to prevent the kids from going somewhere else. He asked if the kids had been arrested or taken home to their parents.

Mrs. Johns said when it was dark out it was hard to see what was happening outside.

Mayor Beck said their behavior needed to be addressed and felt they would just move to another area. He said he would like the parents to be parents.

A discussion ensued about the conduct of the kids and the parents responsibility.

Mayor Beck said he wasn't against the request he wasn't sure what needed to be done. He felt if anything they may have to charge the parents for endangering the welfare of the children by not supervising them. He felt it also didn't define the outside of the recreation area.

A brief discussion ensued on what defined the outside area.

Solicitor Monzo said the ordinance was a concept for Council to consider and if it was favorable then they could add details and make the changes for the next meeting.

Mayor Beck said to pull the ordinance from the agenda and make the changes.

Shawn High tower said he would like the skate park back.

Mayor Beck said they had one and it was gone because no one would use it.

Review of Consent and Regular Agenda

Councilmember Conrad asked that the first closed session be moved before the consent agenda and reserved the right to amend the agenda further after the closed session.

Councilmember Mazurek asked if there was something on the consent agenda that was involved with the closed session.

Councilmember Conrad said he was just asking to do that.

Councilmember Douglass seconded the motion.

Mayor Beck asked the Solicitor if that could be done.

Solicitor Monzo said it was appropriate to move an item up on the agenda and it was dealing with a contract issue and he felt it was in Council's best interest to have the discussion before the consent agenda.

The following roll call vote was taken: Councilmember Conrad, yes, Councilmember Mazurek, no, Councilmember Douglass, yes, Deputy Mayor Lare, yes, Mayor Beck, no.

Councilmember Conrad asked that the water conservation ordinance be moved to the regular agenda he had some

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questions about it.

Res. #2010-306,

A Resolution Providing for a Meeting Not Open to the Public in Accordance with the Provisions of the New Jersey Open Public Meetings Act, NASA 10:4-12. (Attorney Client Discussion - Manager's Contract)

CLOSED SESSION SEPARATE

Public Questions on Consent Agenda and/or Regular Agenda Items

Ed Butler asked about the terminal leave resolution.

Manager McPherson said it would be paid over a five-year period.

Brian Mewing of Townbank Road asked about the shared services agreement and said the County would fund it for the first year. He asked if it was data backed up for Township records and asked currently what was the Township doing.

Mayor Beck said they did have a backup system.

Manager McPherson said there was an off site backup system and the tapes were moved to different buildings.

Clerk Kammer said it was a continuation of the Paris Grant.

Consent Agenda

Approval of Minutes	November 15, 2010
Res. #2010-297,	Payment of Vouchers, \$469,115.19
Res. #2010-298,	Authorization for Refund of Taxes (5 properties paid twice, 1 totally disabled vet)
Res. #2010-299,	Transfer of Appropriations, \$31,500.00
Res. #2010-300,	Resolution for Special Emergency as per N.J.S.A. 40A: 4-53 (Terminal Leave, \$900,000)
Res. #2010-301,	Renewal of Junk Yard License for Cape May Used Auto Parts (Annual renewal)
Res. #2010-302,	Resolution Authorizing Shared Services Agreement Between Lower Township and Cape May County for Records Recovery Center Electronic Data Storage (Provides an off site back-up of the Township's critical data files from the Township's server)
Res. #2010-303,	Resolution Authorizing an Interlocal Services Agreement with the Lower Township Board of Education (For police officer in school)
Res. #2010-304,	Resolution Authorizing an Interlocal Services Agreement with the Lower Cape May Regional Board of Education (For police officer in school)
Res. #2010-305,	Approval of Place to Place Transfer - Extension of Premises, License #0505-33-006-007, T/A Lobster House and Bar, Schooner American & the Raw Bar (licensing additional property purchased)

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.

Regular Agenda

Ord. #2010-11, An Ordinance Establishing Water Conservation Requirements, 1st rdg. (requested by MUA for the DEP) 2nd rdg. December 20th

Matt Eckert from the MUA said he would put it under a housekeeping item, because any Township that had a water

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allocation from DEP was required to have a water conservation ordinance. He said if you potentially were to exceed your allocation you were required to put certain measures in place. He said it came up due to the new well that was proposed in Townbank and were required to update the ordinance as part of the allocation modification project. He said it came to light that there wasn't an ordinance in place and that was how this one came about. He asked if there were any questions from Council.

Councilmember Mazurek he asked if the ordinance passed would something be going out to the public to help them understand the ordinance.

Mr. Eckert said the ordinance would be published and would have the public hearing and also information can go out with water bills and the MUA had been successful in using the reverse 911 system.

Councilmember Conrad asked if it would affect private wells or just ratepayers?

Mayor Beck said the County took care of the private wells.

Mr. Eckert said it would just be ratepayers.

Deputy Mayor Lare said levels 1 & 2 spoke to the sole discretion of the MUA and level 3 didn't have the same language was that an oversight.

Mr. Eckert said level 3 was the State would declare a drought emergency.

Deputy Mayor Lare said it mentioned an application fee and an appeal fee. He said Council had to pass the ordinance to become law and the MUA was setting the fee he felt the amount should be in there before the ordinance was passed. He said it was the Township's ordinance but there was no relief for anyone beyond the Director of the MUA. Deputy Mayor Lare said there was no relief for anyone beyond that one person, he felt the appeal should be held before the MUA or before Council.

Solicitor Monzo said they could introduce the ordinance with the changes.

Mr. Eckert said it was a Township ordinance and they could make any changes they felt appropriate, the MUA drafted the ordinance because they needed it as a matter of necessity.

Mayor Beck asked the Deputy Mayor if he had a fee in mind.

Deputy Mayor Lare said \$10.00, but he had no idea what anyone else was thinking.

Mr. Eckert said a typical application fee was \$50.00.

Deputy Mayor Lare said the relief beyond the Executive Director was something important to him.

Mayor Beck opened the meeting for public comment on the ordinance.

Brian McEwing asked Mr. Eckert he mentioned allocation and the documents said shortage was it controlling the allocations or was it a drought shortage and what was it referring to.

Mr. Eckert said it could cover both instances and explained further.

A brief discussion ensued on the ordinance and the fee.

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.

Resolution #2010-308, Retirement Agreement

Solicitor Monzo said the resolution approved the retirement agreement between the Township and the Manager and set a stop work date of March 4, 2011 and a retirement date of December 31, 2011. He said she would get the allotted vacation days without proration and benefits as a retired employee. He said the agreement was subject to approval of Council. It had been approved and signed off by Kathy McPherson.

Mayor Beck asked if it was going to be discussed before it was voted on.

Solicitor Monzo said typically after a motion and second were made it was up for discussion but it was up to the

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Mayor.

Councilmember Douglass motioned to adopt the ordinance seconded by Councilmember Conrad.

Mayor Beck said they hadn't had public comment.

Joe Winters of Florida Avenue said he didn't feel the resolution could be added as required by law and he asked the Solicitor if he was correct.

Solicitor Monzo said he wasn't, the Township could add any item to the agenda because it wasn't technically set until the day of the meeting.

Mr. Winters wanted to ask each Councilmember if Kathleen McPherson was cohorts and why she was asked to go.

Councilmember Douglass said they had an agreement with the Manager.

Deputy Mayor Lare said he would defer to Council, he wasn't there to be cross examined. He said he didn't have an answer for him. He said it was an agenda item and it was up for a vote.

Councilmember Conrad said it was a negotiated agreement and Council was going to vote on it.

Councilmember Mazurek said it was the first he had seen it.

Mayor Beck said he came prepared to fight. He said if she read the agreement she signed it and agreed to it.

Mr. Winters said she had a contract and it was a difficult time with the budget and contracts and throwing the people of the Township to the dogs. He said he voted to bring her back in when they were elected.

Mr. Winters said Kathleen was moved over to the other Township building in a cubby hole. He said she returned and did a descent job for the Township and they didn't care about anybody only themselves.

Mr. Winters said he campaigned for Deputy Mayor Lare and he sold himself out to the republican party and that's what it was all about politics, they didn't care about anybody else.

Jack Sparks said when he got up one time and spoke the Mayor sat him down because it was personal. He felt what Mr. Winters said was personal and political. He said when there was an election people were voted in and some were voted out. He said Council represented the people and the people didn't have a direct vote when it came to Council and town matters.

Mayor Beck said people had the right to say things to Council and advise them.

Ed Butler asked who was going to handle the Managers job, how did they eliminate someone without a replacement.

He felt Council didn't take in the consideration of the people in a critical time with what's happening in the Township.

He felt they were shirking their duty to the taxpayers by not having a plan in the middle of a budget crises. He said they had to come up with a quality replacement.

He asked Councilmember Conrad whom he had in mind for Manager.

Councilmember Conrad said they would go through the process and learn in the future.

Councilmember Mazurek said at the last closed session Deputy Mayor Lare said he had the closed session to discuss the potential removal of the Manager which was his right. He said at that meeting he made it clear he wasn't for any kind of removal of the Manager. He said toward the end of the meeting the Solicitor said since there was a consensus of three members that wanted to look to the potential removal of the Manager the process had to start.

Councilmember Mazurek said the Solicitor said the best way was to have himself and two people speak to Kathy and see what her position was on the situation. He said the Solicitor suggested one person who was for her and one that was against her. He said he wasn't interested because he wouldn't be here and said the Mayor should do it.

Councilmember Mazurek said that wasn't agreed to but two people did agree to meet with the Solicitor and talk to the Manager. He said he was only giving his perspective and that was he thought there would be a discussion with Kathy given the situation and he heard from someone that she had turned in her retirement notice for the end of 2011 he felt that would solve the problem she wanted to retire and that was a good thing. He said he received a call from the Mayor and asked him if he saw the agreement they were bring for Kathy to sign?

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Councilmember Mazurek said what agreement they weren't supposed to make an agreement they were supposed to have a discussion. He said it laid out terms for her to accept to retire. He said his problem was he never had input, it was shown to Kathy before he saw it and that wasn't how government was supposed to run. He said he would vote no on the agreement for two reasons. He said first of all it had already been signed by her and if that wasn't an ultimatum then he didn't know. He said Deputy Mayor Lare made a statement in the back room which was he would vote for it if she signed it tonight so it was pretty clear there wasn't going to be a lot of discussion. He said he was upset because it could affect people in Ward II and if anyone were to ask him about it and he wouldn't have known the first thing about it. He had read the agreement and the revised one, it was done in haste to get it in tonight. Councilmember Mazurek read a section of the agreement pertaining to legal counsel and it stated she wasn't going to seek legal when she already had. He felt the agreement was done in a hurry. He said he wasn't going to vote for it because it was done too quickly.

Mr. Butler said that was one of his points, there was no back up and for three Councilmen to make that decision sounded like another back room deal. He said it wasn't open government. He felt it was a violation of the Faulkner Act.

Councilmember Douglass asked the Solicitor to explain the process.

Solicitor Monzo said it was a committee of two members of Council so as not to violate the OPMA. He said the agreement was worked on almost immediately after the last meeting and a draft was provided to Kathleen McPherson about a week ago. He asked her to seek the advice of Counsel when he presented her with the draft. He said it wasn't something Council was agreeing to nor the two members of the committee had the authority binding Council or the Township to.

Solicitor Monzo said Kathleen's attorney had given him comments about the agreement last Friday and he did not pick up the language which was part of the first draft about having no Counsel representation. He said she had been represented and had acknowledged that. He said as a result of the discussions a copy was provided to Council yesterday and a memo outlining where things were and he had made himself available for any questions from Council any time.

Solicitor Monzo said it had not been approved yet and if approved it had been done with full disclosure and full direction by Council and had been no violation of the OPMA or the Faulkner Act.

Mr. Butler asked if the Solicitor had been contacted by any Councilmember to discuss the new agreement or answer any questions about it.

Solicitor Monzo said no one had contacted him.

Councilmember Douglass said he wanted the Solicitor to explain so Mr. Butler could see it wasn't an illegal procedure.

Janet Pitts of Pinetree Drive felt that Kathleen did a wonderful job for the Township for all the years that she had been here. She didn't understand why when she put in for her retirement that they were making moves to remove her in her last year. She said she understood politics and the winners got to put their people in key positions and don't try to deny that wasn't the case. She felt it was pretty crappy to do this to an employee when she had already turned in her retirement, it was a pivotal time for the Township with contracts and the 2% CAP.

Mrs. Pitts said no one knew the budget and Township like Kathleen and how were they going to bring in a new person and get them up to snuff. She felt it was dumb on their part and didn't know who they promised the job to and didn't feel they would do as good as Kathy. She thanked Kathy for her services to the Township.

Tom Frisoli Jr., of the Villas said he was a former Councilman and during his tenure they went through three Managers and five Solicitor because to the victor goes the spoils.

Fred Long of Cold Spring said he would like to second everything Mrs. Pitts had said relative to Kathleen McPherson. He said since the public had a synopsis of the closed session meeting of November 15th were the

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minutes available to public.

Mayor Beck said he didn't believe they were.

Solicitor Monzo said once the matter was resolved he would go over the minutes with the Clerk.

Mr. Winters asked when was Mrs. McPherson told she was going to be canned or gotten ride of.

A discussion back and forth ensued about how the Manager was notified she was going to be let go.

Public portion closed.

The resolution was adopted by the following roll call vote: Councilmember Conrad, yes, Councilmember Mazurek, no, Councilmember Douglass, yes, Deputy Mayor Lare, yes, Mayor Beck - had something to say.

Mayor Beck said it was wrong for a number of different reasons and it was going to cost the Township more money in the long run. He said the second issue had to do with the fact in her 36 or 37 years there never had been a mark against Kathy's record and there was a sense of fairness there. He said it was the most critical budget time in the Township's history and now they were in the process of casting her overboard. He wasn't buying into the fact that there wasn't someone ticketed to take the job he felt they would find out soon and absolutely felt it was political.

Mayor Beck said there was a lot of employees who put in when they were going to retire yet she was the only one who's date of July 31 wasn't acceptable and said no she was not staying that long. He again said it wasn't right and that wasn't the way you treat people and after 36 years she had the right to say when she was leaving and he hadn't seen a legitimate reason yet to replace her.

Mayor Beck voted no.

Administrative Reports

Personnel Action Report

October Reports Animal Control, Fire Safety, Treasurer

Council Comments

Councilmember Conrad said Hospitality Night was a great success and there was an upcoming Christmas concert at the High School.

Councilmember Douglass also said Hospitality Night was a good event and thanked everyone involved.

Deputy Mayor Lare congratulated the LCMR Football Team on one of the best seasons in school history.

Mayor Beck said he had another thing to add, he said if Kathleen McPherson didn't accept the agreement there was a chance she would have lost money on her buy out. He said he appreciated everything she had done for the Township.

Mayor Beck said Joe Lonergan had passed away and he had done a lot for the Township and had served on Council. He said there were openings on the Environmental Commission. He announced the Rotary Christmas Parade on December 11th at 7:00 p.m.

Return to Open Session

Joe Winters thanked Kathy for all she had done for the Township and people didn't realize what she had put in it.

Public Comments

David Freas said he had a resolution for the problem with the kids at the Recreation Center. He said his Boy Scout Troop could install solar panel lights which would help the Recreation Center and they could see what was going on.

Mayor Beck asked him if it was a Eagle Scout project.

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Mr. Freas said he could use it as a project.
Mayor Beck said they would look at the ordinance and asked him to submit paperwork to what he was suggesting.
Scout Master Freas Troop 62 wanted to thank Kathy for her services to the Township and also the Mayor and Council. He said whatever was best for the Township was what they should do.

Closed Session

Res. #2010-307, A Resolution Providing for a Meeting Not Open to the Public in Accordance with the Provisions of the New Jersey Open Public Meetings Act, NJSA 10:4-12. (Personnel - Reorganization)

Councilmember Conrad motioned to adopt the consent agenda seconded by Councilmember Douglass. 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 Conrad motioned to adjourn the meeting, seconded by Councilmember Douglass the meeting unanimously adjourned by verbal ayes at 9:23 p.m.

Mayor

Township Clerk

Approved: December 20, 2010