

Regular & Work Session Meeting Minutes -December 20, 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 20, 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

WORK SESSION

Presentations - CAL All Stars Fall 2010 & Councilman Wayne Mazurek

Mayor Beck said he and Deputy Mayor Lare would hand out certificates to the team members. Mayor Beck said it would be the last meeting for Councilmember Mazurek and he would be missed. He had confidence that Eric would fill his shoes well. He mentioned that at times they hadn't always agreed. He said if you show up all the times and vote you were considered a good Councilman. He said Wayne became a great Councilman by doing the things that were the hardest and that was fight. He said they fought together and a few occasions they didn't agree but you could rely on him to defend the town. He said he didn't always take the easy way.

Mayor Beck presented Councilmember Mazurek with a plaque for his service to the Township. Councilmember Mazurek thanked the people in Ward II for their support had some help from some special people along the way. He appreciated the employees of the Township and the support of his family. He said over the years he had worked under three different Mayors and Deputy Mayors and different Council people and said their business differences never got personal and he hoped it stayed that way because that how business should be ran. He also thanked Kathleen McPherson and said she had been a big help.

Div. Of Fish & Wildlife - Ponder Lodge Discussion/Update

Lorie Pettigrew, Southern Regional Planner, Lee Widjeskog, Superintendent for the Souther Region and David Golden who worked with the endangered species also a Township resident had a lot to do with Ponder Lodge in developing the plan. She said they were moving forward in naming it Cox Hall Creek Wildlife Management Area. She wanted to address the trails and what would be done with them during demolition. She said now that Stockton wasn't part of the picture anymore the State was moving

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forward in the demolition of the buildings. She said they had a prebid meeting scheduled for tomorrow and hoped to have the buildings down by February or March. She said part of the plan was to remove some of the trails and leave the interior space as a wildlife refuge and keep most of the activity out of there. She said any dead end trails would be removed and there would be a trail around the perimeter of the property. She went over the various trails that would be in place. She mentioned they planned to have an observation platform off of Cox Hall Creek and once the restoration took place there would be nice marsh to view from that spot.

Ms. Pettigrew said they planned to make the trail around the lake handicap accessible. She said they were removing all the parking lots except the one on Shawmount and near the banquet hall. She said the only building remaining on site would be the maintenance building. She said they would be moving forward with restoration of different habitats on the property and had already been planting trees. She said there would be grassland areas and wildflower meadows. She listed some of the birds and wildlife that the plants would attract. She said two years high school classes helped plant some trees. She said some volunteers were out collecting the blue bird boxes and restoring them once they were done they would be looking for volunteers to monitor the boxes.

Ms. Pettigrew spoke a little about maintaining the trails to keep them cut back.

Councilmember Douglass said some residents were concerned if there would be a buffer between the fence and their property.

Ms. Pettigrew said they had a plan to put vegetation and plants along the fence line.

Councilmember Douglass asked about access to the property.

Mr. Widjeskog said one of the plans was to open the gate at Delaware Avenue because that was the only way to get in to the other parking lot. He said from Shawmount was the only way to get in to walk. He said Springtime would only be opened to have access to the maintenance building. He said they didn't have any plans for other access.

Councilmember Douglass asked if the property would be monitored by rangers or would anyone be on site.

Mr. Widjeskog said there would be no rangers but they would monitor the trails and keep them clear. He said there was a crew stationed at Higbee's and they would come on a weekly basis to check the trails. He said if there were any issues to give him a call. He hoped this would be an example throughout the State. He said there was no money for a full time person but there was money to keep it maintained.

He said the contractors would be out there in February and it should take them a couple months.

Councilmember Douglass asked about the pool being removed.

Mr. Widjeskog said everything was going.

Ms. Pettigrew said they planned to stock the large pond with trout. She mentioned the work they would be doing around the lake.

There was discussion it wasn't possible to close the property off at night.

Mr. Widjeskog said you could not be on the property from 9:00 p.m. to 5:00 a.m. and also mentioned they didn't expect or encourage hunting.

Review of Consent & Regular Agenda Items

Councilmember Conrad said he would like to add a closed session to discuss appointments.

Councilmember Conrad motioned to add the resolution seconded by Councilmember Mazurek. The

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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 .

Deputy Mayor Lare asked the Manager if cost estimates were submitted on Resolution #318 and wanted to make a motion to table the resolution until they had a cost estimate. He said it was for a walking path between Freeman Douglass Park and the High School. He asked the Manager if the letter from the school said they were going to share the cost.

Manager McPherson said that was for the grant application portion. The school committed to \$5,000.00 for the construction part.

Deputy Mayor Lare said he would like to see the path but felt \$16,000.00 in engineering fees was a lot and would like to hold off on it for now.

Deputy Mayor Lare motioned to table 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 .

Public Comment on Consent Agenda

There were no comments on the consent agenda.

Consent Agenda

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|---------------------|---|
| Approval of Minutes | December 6, 2010 |
| Res. #2010-309, | Payment of Vouchers, \$580,652.94 |
| Res. #2010-310, | Approval of Precious Metals License for Adele Christensen t/a Adele s Jeweled Treasurers for the Year 2011 (annual renewal) |
| Res. #2010-311, | Authorization for Refund of Taxes (2 properties - paid twice) |
| Res. #2010-312, | Bid Acceptance & Contract Award for One (1) Chassis Mount 25 Yard Municipal Leaf Loader (Granturk - \$36,087.00) |
| Res. #2010-313, | Cops in Shops Program |
| Res. #2010-314, | Insertion of Special Item of Revenue Pursuant to N.J.S.A. 40A:4-87, Chapter 159 (\$1,200.00 Cops in Shops) |
| Res. #2010-315, | Transfer of 2010 Appropriations (\$23,000.00) |
| Res. #2010-316, | Authorizing Pay Out of Terminal Leave (B. Moore) |
| Res. #2010-317, | Authorization to Cancel Uncashed Checks (3 checks - Total \$.03) |
| Res. #2010-318, | Resolution Approving Project Proposal Between Hatch Mott Macdonald and the Township of Lower for Engineering Services Related to Freeman S Douglass Memorial Park Pedestrian Path to Lower Cape May Regional (Total Phase 1 & 2 - \$16,500) |
| Res. #2010-319, | Resolution Approving Project Proposal Between Hatch Mott Macdonald and the Township of Lower for Engineering Services Related to Reconstruction of Nevade Avenue (\$3,600) |
| Res. #2010-320, | Resolution Authorizing A Joint Purchase with the Lower Township MUA For A Used Excavator (not to exceed \$75,000) |

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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

Ord. #2010-11, An Ordinance Establishing Water Conservation Requirements, 2nd rdg. (requested by MUA) was presented for second reading and final adoption. The Clerk announced the ordinance was posted and published to law and copies were available in the Clerk's office.

Mayor Beck opened the meeting for public comment.

There were no comments.

Mayor Beck closed the public portion.

Councilmember Douglass motioned to adopt the ordinance, seconded by Councilmember Lare. 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

October Report Municipal Judge

November Reports Animal Control, Clerk's Office, Construction Office (WCM & Lower), Dog Licenses, Engineer, Fire Safety, Municipal Court, Tax Office, Treasurer, Vital Statistics

Council Comments

FEMA Reimbursement

Councilmember Conrad said he would like authorization to send a letter to Senator Van Drew to look into the Township's reimbursement from FEMA for the storms. He said the money was sitting at the State.

Mayor's Advisory Board

Councilmember Conrad said he would like to pull the ordinance for the MAB and had some concerns for it and would like to tinker with it.

Mayor Beck asked what kind of concerns.

Councilmember Conrad said it was the Faulkner Act. He said he would like it more as a citizen advisory board and said it seemed one member of Council had more privileges.

Mayor Beck disagreed and felt they did a lot of good.

Councilmember Conrad wished Councilmember Mazurek good luck in retirement. He also congratulated Steve Church who achieved his Eagle Scout and wished everyone a Merry Christmas.

Councilmember Mazurek

Councilmember Douglass also wished Councilmember Mazurek good luck he knew him from being a teacher at school and was a mentor to him. He said he would be missed. He wished everyone a Merry Christmas and Happy New Year.

Deputy Mayor Lare said he played for Councilmember Mazurek when he was a coach in school and had a lot of respect for him. He said he did it with dignity and they may have disagreed on things but it was never personal. He said he wasn't sure if he was a better Coach or Councilmember and wished him and his family the best.

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Councilmember Mazurek said he would miss the Township and his time here. He said it was rewarding some of the unseen things that were accomplished. He thanked Kathy for her work as Manager. He said it was a great Township and hoped great things would continue.

Mayor Beck wished all a Merry Christmas and a peaceful one.

Advertisement for Township Manager

Mayor Beck asked Council who put the ad in the paper for the Manager position.

Deputy Mayor Lare said he gave it to the Township Clerk and asked to have it shared with Council.

He said he would produce emails that showed government in his estimation not in the open but on the internet. He said it was operating as a whole but being ran by one person behind the scenes.

Mayor Beck said it was at a closed session discussed briefly that an ad would be place and accept resumes. He had a problem with the ad and it's content and how the ad was place. He said if you were going to advertise in the League for a Manager an ad was about the fourth thing on the list. He said if there was a rush to do it, which he didn't understand since the Manager's contract was until March 4th why wasn't it put on for a work session where they could discuss what to put in the ad. He said one of the things the League advised is have a discussion on what qualifications to look for also include the department heads and the public.

Mayor Beck stated the ad was ran for eight days and who made that decision. He asked what was spent on advertising and where was it advertised. He said many decisions were made and were not done by Council as a body he said they operate as a body. He said the emails that went back and forth didn't include the Solicitor. He had an opinion from the Solicitor dated July that said using email to discuss issues and communicate decisions among a majority of the governing body was an area of scrutiny for sunshine law violations. He felt some kind of committee should have been formed to work on the ad. He said he refused to respond on internet votes. He said he would provide copies of the emails to the media.

Deputy Mayor Lare said to make sure he included the help wanted ad from two years ago for the Manager. He sent it to Claudia and he understood that was how the Solicitor wanted it done. He said leave it him to have a problem with a help wanted ad. If he wanted 5 years experience he should have said so.

Mayor Beck referred to the closed session in 2008 and the reason they didn't advertise was they didn't need to seek a Manager, they had Kathleen McPherson.

Councilmember Douglass asked if the matter was available to the public.

Mayor Beck recited a portion of the closed session where each Councilmember said they had no problems with Kathy when the opening occurred. He said they weren't looking to advertise but if they were it needed to be done in as a body or in the open.

Deputy Mayor Lare asked when the minutes were from.

Mayor Beck said Dec. 1, 2008.

Deputy Mayor Lare asked Mayor Beck if he was saying the first communication he had with him or any other Councilmember prior to that meeting was in closed session.

Mayor Beck said they had ran together.

Deputy Mayor Lare said he didn't answer the question and repeated the question.

Mayor Beck said he would be quite frank, he didn't remember but what he did remember was they didn't have to polictic for her because everyone knew they wanted her as Manager. He said if they didn't want her they should have said something. He said it wasn't a situation where they were advertising. He said once it was decided to advertise it was imperative they sat down to do it as a body and not at the initiative of one person over the internet with people voting to confirm the ad. He said he would not vote to pay for the ad.

Mayor Beck again asked what was the rush, he read a portion of Kathleen's contract that states at the sole discretion of the employer and the approval of the governing body the actual start date shall be earlier than March 4, 2011 and

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felt she wouldn't see March 4th. He said he only had the microphone to defend himself and if people stepped out of line he would point it out.

Public Comments

Joe Boyle wished everyone a Merry Christmas.

Appointments

Joe Winters asked if there was a meeting prior to appointments.

Mayor Beck said "no".

Councilmember Conrad said it was discussed at the last closed session.

Township Manager

Joe Winters said the Manager had a contract and didn't understand who was going to pay for the Manager to come in and where were they getting the money.

Mayor Beck said they had to wait and see.

Mr. Winters asked what were they paying the new Manager.

Mayor Beck said once they settled on a candidate then they would negotiate the salary.

Solicitor Monzo said it would have to be approved by Council.

Mr. Winters said he didn't understand the move now, he had good times and bad times with Kathy and didn't understand what they were trying to do. He said what they were trying to do was sink the Township. It was almost criminal what was being done without thought unless there was an ulterior motive. He said a lot of stuff was being done and he didn't understand the benefit.

Mr. Winters said he agreed with the Mayor about the emails and he would be requesting copies.

Frank Serraco thanked Council for their kind thoughts and work they put in to get rid of the Manager. He said he saw what happened the last time. He said she had been loyal to the Township for 37 years and didn't understand why they weren't loyal and let her retire with dignity and respect.

Janet Pitts of the Villas said she was concerned with how things were operating. She asked if there were work sessions where things were discussed or was it by phone or emails. She asked how did they come to the decision regarding the Manager.

Councilmember Conrad said they had a closed session and formed a committee and worked with the Solicitor.

Mrs. Pitts questioned Council about the ad for the Manager.

Councilmember Conrad said it went through a Township Official.

Work Sessions

Mrs. Pitts said it seemed a lot was going on in the background and Middle Township had a work session in front of the public and felt they wouldn't have half the problems if it were done that way.

Mayor Beck said they did it for the budget.

Councilmember Mazurek said they had done the work session for the budget where Council sat at the table to discuss things. He said everything they did should be done in public. He said email things were scary and was a convenient way to get things done. He felt there should not be email between Councilmembers, it was a fine line what were good emails and what were bad.

Mrs. Pitts asked about Council's laptops and email addresses they used to conduct Township business.

Mayor Beck said he was looking into that and your personal site could be construed if it was being used for Township business.

Councilmember Conrad said the law was very clear emails used for Township business were subjected to OPRA. A brief discussion ensued about emails.

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Ad for Township Manager

Bill Greenfield of the Villas asked what was the time frame when the ad was placed to the deadline on submitting resumes.

Mayor Beck said it was in the paper last week and due by December 23rd.

Mr. Greenfield said it didn't seem like a lot of time.

Deputy Mayor Lare said there were no shortages of applications.

A discussion ensued on where it was advertised.

Mr. Greenfield said it seemed like it was predetermined that they had someone in mind.

Closed Session Minutes

Fred Long of Cold Spring said he had asked previously about the closed session minutes of November 15th and where they were available now.

Solicitor Monzo said there were personnel exceptions and they were not typically available.

Mayor Beck said they should be released when the issue was resolved.

It was discussed about looking into releasing closed session minutes on a periodic basis after the Solicitor reviewed them.

Mayor's Advisory Board

Mr. Long asked Council to have the Solicitor write an opinion on where the MAB was in violation and also an opinion on conducting municipal business by email.

Mayor Beck said the Solicitor had done an opinion on the emails.

Mr. Long said he didn't know what it said.

A discussion ensued about the Solicitor's opinions that had been given to Council.

Mayor Beck said Mr. Long could file an OPRA to get the opinions.

Mr. Long asked about the MAB and Faulkner Act.

Councilmember Conrad said Council were all one vote so why did the Mayor have his own board.

Mr. Long said because Council had passed a resolution.

Councilmember Douglass felt the MAB was formed prior to the current form of government.

Mr. Winters asked if the work session could be prior to the Township meetings.

Mayor Beck said at the second meeting in January the process could be discussed.

Township Manager

Jack Sparks asked the Mayor if he discussed with any other Councilmember about Kathy's appointment before she was appointed.

Mayor Beck said he probably knew more or remembered more.

Mr. Sparks said the Mayor had meetings with him and Kevin.

Mayor Beck said why wouldn't he have discussed it if they ran as a team.

Mr. Sparks asked if he spoke to other people about Kathy.

Mayor Beck said he did and why wouldn't he.

Mr. Sparks asked if it was discussed in an open meeting.

Mayor Beck and Mr. Sparks debated about discussing the Manager in an open meeting.

Councilmember Mazurek said the issue the Mayor raised appeared that the advertisement of the Manager was by email then sent to Council without a meeting about it. He said no one saw a vote about the ad or the cost and Council had no input about it. He said if it had been discussed in public they could have changed some things and discussed qualifications.

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Wayne Weissman said "can't we all get along". He thanked Councilmember Mazurek for his representation of Ward II.

Mayor Beck said he couldn't let something go by when it was wrong.

Councilmember Douglass said he wanted to clarify things, there was no dismissal of the Manager. He said prior to the Manager announcing her retirement they agreed to look for another Manager. It was said in closed session that he and Councilmember Conrad would work with the Manager on an agreement.

Mr. Serraco said Kathy had already agreed to retire and yet the date was changed.

Mr. Greenfield said he would be surprised if the next Manager would be someone from out of town and not politically connected.

Mr. Winters asked if the Manager had to be certified.

Solicitor Monzo said "no".

Mayor Beck closed the public portion.

Res. #2010-321, 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 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, Deputy Mayor Lare, yes, Mayor Beck yes.

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

Mayor

Township Clerk

Approved: January 3, 2011