



**MINUTES
BOROUGH OF EMERSON
MAYOR AND COUNCIL**

**March 6, 2012
7:30 P.M.**

**Borough Hall-Council Chambers
Emerson, NJ 07630**



Mayor Colina called the meeting to order at 7:33 p.m., and identified the emergency exits. Ms. Jill Dunican led the assembled in the salute to the flag. Mayor Colina asked everyone to remain standing for a moment of silence. He said it there was sad news in the family town of Emerson - Ms. Robin Griffin lost her mother the previous week after a long illness and Eric Ostrovsky, son of Villano School Principal Buzz Ostrovsky had died on Saturday morning. He said their hearts and prayers and good thoughts went out to both the Griffin and the Ostrovsky families.

O.P.M.A. Statement

Mayor Colina read the Sunshine Statement announcing that the meeting of March 6, 2012 had been adequately noticed and was in compliance with the provisions of the Open Public Meetings Law. Further, that the meeting was included in the Annual Meeting Notice Resolution transmitted to the Bergen Record and Ridgewood News on December 21, 2011; posted on the bulletin board in the Borough Hall, Municipal Place, Emerson, NJ 07630 and has remained continuously posted as the required notices under the Statute. In addition, a copy of the notice was on file in the Office of the Municipal Clerk and had been available to the public since its approval by the Governing Body.

ROLL CALL:

PRESENT:

Mayor Colina, Councilwoman DiPaola, Councilwoman Garis, Councilman Knoller, Councilman Rivers, Council President Shaw, Councilman Worthington

Also present were Borough Clerk Carol Dray, Borough Attorney Scott Mooney, Borough Administrator Joseph Scarpa, Borough Auditor Gary Higgins and CFO Catherine Henderson.

III. FINANCIAL MATTERS

Mr. Higgins outlined the 2012 Municipal Budget saying it was one of the more fiscally prudent and conservative budgets. The tax rate would increase 1.7 cents per \$100 of assessed valuation on a home valued at \$433,650; roughly \$72 for the year. He added that the budget was only up about 1.5% and was brought in well below the appropriation cap.

Councilman Rivers thanked Mr. Higgins, staff and Finance Chair Councilman Worthington for their effort. He said it was commendable that they were able to maintain low budget increases for three years in a row, especially in these the financial times. He said they were also able to keep most if not all of the services intact for the town which was something they always strived to do.

- Resolution No. 69-12 – 2012 Municipal Budget Introduction
 - ☞ **Motion** to approve Resolution #69-12 Approve Municipal Budget Introduction was **moved** by Councilman Worthington, **seconded** by Councilman Rivers and carried by roll call vote.

RC: Council members:

YES: Garis, Worthington, Rivers, Shaw, Knoller, DiPaola

Mayor Colina announced that the public hearing and adoption of the 2012 Municipal Budget were scheduled for Tuesday, April 3rd, 2012 in the Council Chambers of Borough Hall at 7:30 p.m.

- Resolution No. 70-12 – Approve Special Items of Revenue
☞ **Motion** to approve Resolution #70-12 Approve Special Items of Revenue was **moved** by Councilman Worthington, **seconded** by Councilman Rivers and carried by roll call vote.
RC: Council members:
YES: Garis, Worthington, Rivers, Shaw, Knoller, DiPaola
- Resolution No. 71-12 - Authorizing Decrease in Deferred School Taxes for Local District School Taxes
☞ **Motion** to approve Resolution #71-12 Approve Municipal Budget Introduction was **moved** by Councilman Worthington, **seconded** by Councilman Rivers and carried by roll call vote.
RC: Council members:
YES: Garis, Worthington, Rivers, Shaw, Knoller, DiPaola

IV. UNFINISHED BUSINESS

- Hillman Field – Councilman Rivers provided an update explaining that Aqua Turf had been performing work on the field in February and early March but they were missing some top dressing. He noted that the Borough Engineer had written a letter stating they were working with Aqua Turf to potentially come back to do additional work on the field. The original drill and fill work had been done differently than he and Mr. Scarpa thought it would be done. He believed the engineer had given approval on the work. Since then they had seen videos on the drill and fill procedure and he was not certain that this was what was done on the field. He said he was on the field the previous Saturday and there were still some spots that needed to be leveled. He said the engineer was working to have Aqua Turf come back to continue with the top dressing and level off the field. He stated that the field looked better but they wanted to get it to a point where it was as great as they were expecting it to be.

He pointed out awarding the contract to the ‘lowest bidder’ did not give license to perform the least amount of work and expected the specifications to be followed literally. His and Council President Shaw’s expectation with drill and fill was that each hole excavated on the field would be filled 100% with sand. That process was not done. Councilman Rivers stated that Aqua Turf’s machine was similar to one he saw in a video demonstrating drill and fill technology and should have performed in the same manner. He said Aqua Turf claimed there was moisture in the sand which would not allow them to follow this process.

Mr. Scarpa said the Borough Engineer was not on the field when Aqua Turf was performing this work, but came later. He added the engineer felt the drill and fill was complete but conceded that the top dressing was not done and was working on a schedule for completion. Mr. Scarpa said the Borough Engineer wrote that the work had been completed in conformance with the specifications.

Councilman Rivers said he wanted to have a conversation with the engineer concerning whether the work was done in conformance with the specs – in his opinion it was not. Council President Shaw remarked that the bid specifications had not conformed to their expectations after discussions of what was to be performed on the field. He said if this was the case, there would be a much larger issue but be left to Councilman Rivers to investigate. He said a significant question for the Borough Engineer was whether the

drill and fill methodology as viewed on YouTube and identical to the Governing Body's expectations was of any material difference than the procedure that the contractor implemented. Councilman Rivers said he and Mr. Scarpa would meet with the engineer to get his opinion and would have a report for the next meeting.

Councilman Rivers said all the sports teams and the high school had been advised that there would be no running drills or practicing allowed on that area of the field but ball games including a center and left fielder. Their expectation was that the field would be useable in April. He commented this project in the past had lack of adequate oversight and some things had been left to slide; but now they would make sure things were done right so the field could be used appropriately moving forward.

- Broadway – Councilman Rivers reported that he had asked the Environmental Commission to steer the Broadway paper street project by forming a subcommittee to study the area and report back to the Mayor and Council with recommendations on what should be done to transform it into a natural park. The Commission was excited to take on the task and intended to report at the April 3rd meeting.
- Emerson Volunteer Ambulance Corps – Mr. Mooney said he had not yet received an opinion from the IRS regarding whether or not 501c3 public charities could receive stipends/clothing allowances. He explained that he had followed up on a recommendation made at the previous meeting by Mr. McCann by speaking with Mr. Tom Hanrahan, Esq. He noted that Mr. Hanrahan said he wasn't a repository of knowledge in that area but discussed issues that had occurred in Cresskill, describing it as a civil rights case and the circumstances did not necessarily match the concerns in Emerson.

Mr. Hanrahan had also recommended checking 2010 reports from the Bergen County Prosecutor's office relating to Fire Departments. He explained that fire departments were 501c (3) public charities like ambulance corps so the topics in this report could easily be applied to ambulance corps. He said that no one was prosecuted as a result of the report, which related to the Fairview Fire Department using money it had raised to send members to Cancun on vacation. As a result, the prosecutor's office randomly picked 15 – 20 other fire departments in Bergen County. The report noted that it was neither illegal nor inappropriate for any firefighting agency to solicit funding for either professional or personal firefighter support. Professional support referred to those contributions placed towards the acquisition of clothing, safety equipment, gear and other property customarily utilized by the firefighter in the performance of their official duties. The report noted that in certain instances the public needed to be more aware of where the personally solicited funds were going – examples included acquisition of equipment for personal purposes, including food or other resources, equipment for weight training rooms, kitchens or vacations.

Mr. Mooney said the report stated that several departments were not even filing tax returns; this was not an issue in Emerson. Finally the report had recommendations including making sure everything was filed properly. Mr. Mooney pointed out that the EVAC did have an accountant that filed for them and clothing stipends over \$600 should be included on Form 1099. He mentioned an ad the EVAC put in Community Life for recruitment purposes which stated that one of the benefits was a yearly stipend. He said he would withhold comment until he received the advisory opinion of the IRS, but it seemed that they would not consider clothing stipends as income.

Councilwoman DiPaola said she thought the bottom line in the prosecutor's report was that any money donated to any 501c3 volunteer organization was public money, every penny collected was accountable to the public and the public was entitled to know how that money was being spent. She said that beside the 2005 solicitation for volunteers, she had not seen the same in recent years and would like to in the future. She recommended waiting for the IRS to determine whether or not they could pay themselves from the donated funds. Mr. Mooney replied that according to the prosecutor's report, that was not an issue. She said that the prosecutor's report did not say anything about paying anyone. He said that the report referred to the acquisition of clothing. She asked whether they were now determining that the money was for clothing. Mr. Mooney explained that the EVAC said it was a clothing stipend.

Council President Shaw asked her if she believed it to be something else. She said it was a stipend. He said that a stipend could be a clothing allowance or other things. She referenced an article written by Tom Clancy of The Pascack Press that surveyed clothing allowances in the Pascack Valley and the normal reasonable amount was \$300 - \$500. Mr. Mooney remarked that the prosecutor's report said 501c3 organizations also paid their officers. She responded that she wanted to wait to hear from the IRS whether they were actually allowed to pay themselves with the donated funds. Based on her knowledge and research, the donated funds were supposed to go right back into the organization. If the Governing Body wished to give them officers' pay as they did for the Fire Department, it should come out of the municipal budget and the donated funds should perhaps be used to run the Corps.

Council President Shaw asked Councilwoman DiPaola if it was her opinion that the donated funds should not be used to pay stipends regardless of what they were for. Councilwoman DiPaola repeated that she wanted to wait for the IRS opinion because in her opinion she did not think the prosecutor's report was correct. Council President Shaw asked what she based her opinion on. She said she based it on a conversation she had with the IRS so she wanted to wait for the Borough Attorney to get his official opinion. She said it was also based on a conversation with Mr. McCann. Council President Shaw asked if she was saying that 501c3 organizations could not pay stipends from donated funds. She explained that the IRS told her on the phone that any money raised by a charitable 501c3 organization needed to go directly back into the organization for the purpose of the organization. Council President Shaw asked if that included not paying stipends. She responded that she did not know and did not ask for that interpretation. Council President Shaw asked whether that would not be the relevant part of the analysis. She said she had a brief conversation on the phone with the IRS and they said money could not be given to members and wanted to wait for the IRS report to Mr. Mooney.

Council President Shaw asked what her point was; what her position was. Councilwoman DiPaola said her position was that she wanted to wait for the IRS opinion before moving forward with anything. Council President Shaw commented that she did not have a position about them paying stipends. She responded that she thought he knew her position at that point. He asked what her position was. She repeated that she wanted to wait for the IRS opinion before they moved forward on this topic.

Mayor Colina said his position was that if, in fact, the EVAC was sent to another town for an installation dinner he did not think that equated to a trip to Cancun. He had read some of the report but thought it was not a fair comparison. He said that Council President Shaw's question about Councilwoman DiPaola's position was a way to draw out that she still had concerns about improprieties. He said they had utilized their Borough Auditor, the CFO, and the Borough Attorney and had talked to people who

had come on her behalf. He said his position was that this had been a big drain on Governing Body resources, Borough resources, on the Borough's emotions and was an issue that had been publicized in a way that never had to occur. He said Councilwoman DiPaola really had to articulate to her teammates and the Borough something a little more concise and in line with what she wanted out of it. He added that it had come to the point where she was not removed as the liaison, but was superseded by an ordinance she was telling people she was enforcing when in fact she only found out about it five weeks ago and her own behavior was in question for the year.

He said he was not criticizing her for her diligence and passion as a Councilwoman. However; he was trying to tell her that this particular ordinance was enforced so they could move off of it and start to free up resources for what he considered more important and critical work for the Borough. He said it seemed like if she did not get the answer she wanted, she was going to keep going to someone else. If the IRS representative that she spoke with did not give her the answer she wanted, she might get another IRS representative. He asked her on behalf of the Governing Body to bring it full circle because he thought they were on the right track and let them all collectively get on with the Borough's business.

Mr. Mooney said that the bottom line was that he was not sure what waiting for the IRS was going to achieve anyway. The Governing Body did not have the authority to pull the certificate for the EVAC's 501c3 adding that quite frankly, if there were suspicions of criminal activity, it should go to the proper authority which was not the Governing Body. Councilwoman DiPaola responded that she did not use any of those words. She said they needed to find out from the IRS whether it was appropriate that they use donated funds to pay themselves money and she was waiting for the definite answer on that because no one seemed to have it. Mr. Mooney asked what the Mayor and Council should do if they found that it was improper. She said that moving forward maybe they should use municipal funds in order to pay them and use the donated funds to buy oxygen and run the rig.

Council President Shaw remarked that the process had taken a minimum of 100 hours of review and due diligence including the Borough Attorney's time, Governing Body time, experts' time including the Borough Auditor and individuals with information like Mr. McCann and Mr. Hanrahan. All the professionals had all come up with the similar conclusion that nothing inappropriate had gone on - nothing unlawful, nothing illegal and nothing deceptive. That conclusion was reached by the majority of the Governing Body, the Borough professionals, and individuals who were identified as other professionals with information. He added that she sought an opinion in addition to the 25 others that existed in the consideration of this matter and it was unfounded and irresponsible.

Councilwoman DiPaola replied that she thought it was not an unusual thing to find out the opinion from the official governmental agency that gave out the 501c3 status as to what was allowed to be done with donated funds. Council President Shaw said there had been professionals affiliated with the Borough of Emerson or had been reached out to either through her or their own resources that had confirmed either using an IRS code or a New Jersey administrative code or statute that this activity that she deemed to be in appropriate or suspect was not. He continued that the only issue she had was that no one except an anonymous person on the phone at the IRS supported her potential position.

Councilwoman DiPaola said that was not true. Council President Shaw maintained that it was true. He said his position was that she had exhausted the process; they had allowed the process to run its course, had exhausted every professional, every avenue, had conference after conference, meeting after meeting, had citations and resources all of which she ignored. Councilwoman DiPaola said that Mr. Mooney had written a letter and asked why they weren't waiting for the answer. Councilman Shaw said they would wait for the answer. Councilwoman DiPaola said that was all she was asking, end of story. Council President Shaw said that was not all she was asking; her commentary was irresponsible. She said she was entitled to her opinion. He responded that her opinion was unfounded and irresponsible. Councilwoman DiPaola said that was his opinion. He said it was a fact that she wanted to cast a shadow and start a fire. Councilwoman DiPaola said she was providing a solution. He said the only solution was one that solved her issue. The EVAC's issue had been resolved and she was acting in an irresponsible manner because her commentary suggested something untoward which was not true and that was the bottom line. Council President Shaw said she was being irresponsible. Councilwoman DiPaola said that was in his opinion. Council President Shaw said it was a fact.

Mr. Mooney said he called the IRS before the last council meeting and was told it would take no longer than 30 days. If it went past the 30th day, he would call and would try to get an answer and inform the Governing Body of his findings.

Mayor Colina stated he agreed with pretty much all of what Council President Shaw stated except the reference to 100 hours he might be add a few missing a zeros.

Councilwoman Garis read a statement from the Fair Labor Standards Act which stated that "an individual who volunteered may receive a stipend and still be considered a volunteer. These stipends are used as a way to offset the out of pocket expenses without inadvertently subjecting the town to those expenses. Municipalities must recognize the generosity and public benefits of volunteerism. We do not want to create obstacles to volunteers who provide a valuable service to municipalities for charitable and public purposes. We do not want to impede or discourage volunteerism in any way. The current economic climate challenges town officials to provide services with budgets stripped to the bone and heeds a call for and a hope that citizens will rise to the occasion whether it is a tradesman volunteering their time to rewire a public facility or simply a dad that helps out with a rec program. Volunteers are and remain an integral part of the community".

Councilwoman DiPaola said she agreed with that but it did not say in that statement that the donated funds could be used to pay stipends.

- Recreation Use of Facilities Fees – Councilman Knoller said that he had been meeting with the Recreation Commission. Last year they had a vote to reduce fees to use the fields to \$35.00. It had not been made official by the Borough and explained that there were stipulations attached to the reduced fee. He explained that the preapproval for a reduced fee to use ball fields would be granted to individuals who performed professional service field maintenance using their own tools. In exchange for preparing a ball field for play, the rates would be discounted. He explained the preapproval was to prevent individuals from doing things on their own without authorization or trying to leverage such activity to solicit special consideration after the fact. He referenced Hillman Field and not wanted something done on the field different from than the field plan in place.

Councilman Rivers said the information provided by Councilman Knoller seemed out of character for what they were trying to accomplish because the statement seemed like the people on the field were trying to cause more harm and that has not happened. He added there were a couple groups in town that had not been able to easily work with the Recreation Commission to gain access to the field. They did all the work in order to play on the fields which he described as a difficult process. He said that other towns, for a similar service, were charging \$20 or \$30 instead of the large rates that Emerson charged for the same service. He noted that his understanding was that for people doing all the work to make the field playable and then play on it, they should have a reduced fee as opposed to the Borough going out and doing all the work for them and charging them the normal fee. He said this had already been discussed and he was on board. Mr. Mooney said they would draft something for the next meeting.

V. NEW BUSINESS - None

VI. INTRODUCTION OF ORDINANCES

Mayor Colina announced that Ms. Dray would read the following ordinance by title and it would be further considered at a Public Hearing to be held on March 20th, 2012 at 7:30 p.m. in the Council Chambers of the Borough Hall, Municipal Place, Emerson, N.J. and published in the March 9th, 2012 edition of the Ridgewood News by summary. He added that the ordinance was on file in the Clerk's Office and posted on the official bulletin board of the Municipal Building where copies would be available to the General Public at no charge.

First Reading:

1442-12 CALENDAR YEAR 2012 ORDINANCE TO EXCEED THE MUNICIPAL BUDGET APPROPRIATION LIMITS AND TO ESTABLISH A CAP BANK (N.J.S.A. 40A: 4-45.14)

☞ **Motion** to approve Ordinance #1442-12 on first reading was **moved** by Councilman Worthington, **seconded** by Councilman Rivers and carried by roll call vote.

RC: Council members:

YES: Garis, Worthington, Rivers, Shaw, Knoller, DiPaola

Second Reading and Public Hearing:

1441-12 BOND ORDINANCE TO AUTHORIZE THE MAKING OF VARIOUS PUBLIC IMPROVEMENTS IN, BY AND FOR THE BOROUGH OF EMERSON, IN THE COUNTY OF BERGEN, STATE OF NEW JERSEY, TO APPROPRIATE THE SUM OF \$475,000 TO PAY THE COST THEREOF, TO MAKE A DOWN PAYMENT, TO AUTHORIZE THE ISSUANCE OF BONDS TO FINANCE SUCH APPROPRIATION AND TO PROVIDE FOR THE ISSUANCE OF BOND ANTICIPATION NOTES IN ANTICIPATION OF THE ISSUANCE OF SUCH BONDS.

☞ **Motion** to open the meeting to comments from the public on Ordinance #1441-12 was **moved** by Councilwoman DiPaola, **seconded** by Councilman Rivers and carried.

Seeing no hands, Mayor Colina asked for a motion to close the meeting to comments from the public on this ordinance only.

☞ **Motion** to close the meeting to comments from the public on Ordinance #1441-12 was **moved** by Councilman Rivers, **seconded** by Councilman Worthington and carried.

☞ **Motion** to adopt Ordinance #1441-12 on second reading was **moved** by Council President Shaw, seconded by Councilman Rivers and carried by roll call vote:

RC: Council members:

YES: Garis, Worthington, Rivers, Shaw, Knoller, DiPaola

VII. REPORTS

- Borough Administrator – Mr. Scarpa detailed items capital items on sheet 40C in the Municipal Budget involved capital items.

VIII. PUBLIC COMMENT

Members of the public are welcome to speak on any topic by coming to the table and stating your name and address for the record. In the interest of time, speakers are limited to five (5) minutes. In consideration of all who may wish to speak, please keep your comments brief and concise.

☞ **Motion** to open the meeting for comments from the public was **moved** by Councilman Rivers, **seconded** by Councilwoman Garis and carried.

Seeing no hands, Mayor Colina asked for a motion to close the meeting to comments from the public.

☞ **Motion** to close the meeting for comments from the public was **moved** by Councilwoman DiPaola, **seconded** by Councilman Rivers and carried.

IX. RESOLUTIONS ON CONSENT AGENDA NO. 72-12

Matters listed below are considered routine and will be enacted by one motion to the Council and one roll call vote. There will be no separate discussion of these items unless a Council member requests an item be removed for consideration.

☞ **Motion** to approve Consent Agenda Resolution #72-12 was **moved** by Councilman Rivers, **seconded** by Councilwoman Garis and carried by roll call vote.

RC: Council members:

YES: Garis, Worthington, Rivers, Shaw, Knoller, DiPaola

Ca 73-12 Endorse Recycling Tonnage Report

Ca 74-12 Authorize Tax Assessor and Tax Appeal Attorney to File Municipal Appeals

Ca 75-12 Approve LOSAP Certification List

X. ADJOURNMENT

With no other business to address, at the request of Mayor Colina, a motion to adjourn was **moved** by Councilwoman DiPaola, **seconded** by Councilman Rivers and carried at 8:41 p.m.

Carol Dray, RMC/CMC/CMR
(Proofed 04/25/12)

March 12, 2012