



MINUTES  
BOROUGH OF EMERSON  
MAYOR AND COUNCIL  
March 18, 2014  
7:30 P.M.  
Borough Hall-Council Chambers  
Emerson, NJ 07630



I. CALL TO ORDER

Mayor Colina called the meeting to order at 7:30 p.m. and identified the emergency exits.

II. ROLL CALL

Mayor Colina asked Ms. Dray to call the roll of the Governing Body.

**Present:** Mayor Colina, Councilwoman DiPaola, Councilman Knoller, Councilman Paino, Council President Rivers, Councilman Worthington

Also present was Borough Attorney Ron Gordon.

III. EXCUSED ABSENCE OF GOVERNING BODY MEMBER

- Councilwoman DiPaola for her absence from the Regular Meeting of March 4, 2014  
☞ **Motion** to accept the absence of Councilwoman DiPaola from the Regular Meeting of March 4, 2014 was **moved** by Council President Rivers, **seconded** by Councilman Knoller and carried unanimously.

IV. PROCLAMATIONS & CITATIONS

- Robbie Maggiulli Day – Mayor Colina read a proclamation declaring March 19<sup>th</sup> Robbie Maggiulli Day in the Borough of Emerson based on his outstanding wrestling record at Emerson Jr. /Sr. High School.

V. FINANCIAL MATTERS

CFO Catherine Henderson and Borough Auditor Gary Higgins discussed the budget introduction and said that amendments to any line item could be prepared and presented after the public hearing.

1. **1475-14** CALENDAR YEAR 2014 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 #1475-14 on first reading was **moved** by Council President Rivers, **seconded** by Councilman Knoller and carried by roll call vote of 5-0.

**RC: Council members:**

**YES: DiPaola, Paino, Rivers, Knoller, Worthington**

2. Resolution #73-14 Municipal Budget Introduction

☞ **Motion** to approve Ordinance #1475-14 on first reading was **moved** by Council President Rivers, **seconded** by Councilman Knoller and carried by roll call vote of 4-1.

**RC: Council members:**

**YES: Paino, Rivers, Knoller, Worthington**

**NO: DiPaola**

Mayor Colina announced that the Public Hearing for the 2014 Municipal Budget would take place on April 22, 2014 at 7:30 pm in the Council Chambers of the Borough Hall. Pursuant to N.J.S.A. 40A:4-6 the Budget Summary would be advertised in the March 21, 2014 Edition of the Ridgewood News. Pursuant to N.J.S.A. 40A:4-(8) copies of the approved 2014 Municipal Budget were available in the Municipal Clerk's Office and a copy would be distributed to the Emerson Public Library. In addition, the approved 2014 Municipal Budget would be posted on the borough website for public inspection in accordance to best practices.

3. Resolution #74-14 Special Items of Revenue

☞ **Motion** to approve Resolution #74-14 Special Items of Revenue was **moved** by Council President Rivers, **seconded** by Councilman Knoller and carried by roll call vote of 5-0.

**RC: Council members:**

**YES: DiPaola, Paino, Rivers, Knoller, Worthington**

4. Resolution #75-14 Revenue – New Parking Permit Fees

☞ **Motion** to approve Resolution #75-14 Special Items of Revenue was **moved** by Councilman Worthington, **seconded** by Council President Rivers and carried by roll call vote of 5-0.

**RC: Council members:**

**YES: DiPaola, Paino, Rivers, Knoller, Worthington**

## VI. APPOINTMENTS/RESIGNATIONS

- Historic Preservation Commission

Mayor Colina appointed Kevin Rooney and Fran Varoli to the Historic Preservation Commission.

- Nominations for Vacated Council Seat

Mayor Colina said the fifteen day deadline for the Republican Committee to present three nominees had expired. He explained that the Council could now appoint a successor from the same political party. Mr. Gordon agreed and detailed the vacancy law.

Councilwoman DiPaola requested opening the meeting up to the public on this topic. Mr. Gordon responded that there was no requirement in the municipal vacancy law for a public hearing or to open the matter up to the public; the appointment was at the discretion of the Governing Body and was their responsibility. Mayor Colina asked for comments from the Council and Council President Rivers commented that he was not opposed to opening the matter up to the public.

☞ **Motion** to open the meeting to comments from the public was **moved** by Councilwoman DiPaola.

Mr. Gordon asked if there were other comments from the Governing Body.

The motion was **seconded** by Council President Rivers.

Elizabeth Garis, 173 Jordan Road asked to be nominated for the vacated position on the Council.

Ken Hoffman, 61 Emwood Drive supported nominating Elizabeth Garis to replace Mr. Griffin on the Council.

Chris Leins, 118 Ackerman Avenue commented that he had run for Council at the last election and based on the voting count, he was the next one in line for the position. He asked to be considered for the appointment.

Wilfred Ortiz III, 15 Washington Avenue said he disagreed with their interpretation of the Vacancy Law.

☛ **Motion** to close the meeting to comments from the public was **moved** by Council President Rivers, **seconded** by Councilman Knoller and carried.

Councilwoman DiPaola made a lengthy statement discussing the vacation of the seat and how in her opinion, Elizabeth Garis' civil rights were violated by not being able to run in the election. In addition, she remarked that there was a shadow of impropriety about Councilman Paino's petition and candidacy and questioned his ability to vote on filling the vacancy. Council President Rivers and Councilman Paino engaged in a lengthy discussion with Councilwoman DiPaola in debate and response to her remarks.

Mr. Gordon concluded the discussion by reminding the members that in America people still had the right to have crimes investigated if they had taken place and was not to be aired as fact until they were brought through that process. What someone told the Prosecutor that had not been introduced in any court was the rankest form of hearsay and inappropriate. He added that the business at hand was not to skewer anyone, not to indict anyone; it was their job to appoint a replacement. The way to do that was to submit nominations, explain why you think that person was the best person for the job which she had done and then put the matter to a vote – not going after items that were outside the Councilwoman's jurisdiction.

Mr. Gordon added the he was in favor of full transparency and full discussion of appropriate matters but criminal investigations were not appropriate for the public discussion in this venue until they became a matter of public record.

☛ **Motion** to appoint Vincent Tripodi to take the open seat was **moved** by Council President Rivers, **seconded** by Councilman Knoller.

Councilwoman DiPaola stated that she wanted to vet the candidate before she voted.

Mayor Colina asked for other nominations. Councilwoman DiPaola nominated Elizabeth Garis. Mayor Colina asked for other nominations. Hearing no other nominations, Mr. Gordon said now was the time to close nominations.

☛ **Motion** to close nominations was **moved** by Council President Rivers.

Mr. Gordon said the process now was whatever the Governing Body wanted to do. He said the statute required and only said they were to chose and they had the right to establish the procedure they wanted before they made that selection. He stated that they could have discussion; they could vote on it; it was their call.

Mr. Gordon was questioned about the qualifications of nominees and he replied that anyone from the same political party as the vacated seat was the qualifier.

Mr. Tripodi said he would be happy to answer any questions and Councilwoman DiPaola proceeded with the interview of Mr. Tripodi.

At the conclusion of the questioning, Councilwoman DiPaola thanked him and stated that his responses were commendable reasons for sitting on the dais.

Mayor Colina asked Mr. Tripodi if he was a taxpayer and Mr. Tripodi replied that he was.

Councilwoman DiPaola asked if Councilman Knoller or Councilman Worthington had any questions and if they had ever met the man before. Councilman Worthington said he knew of Mr. Tripodi but had not come with a list of prepared questions. Councilwoman DiPaola stated her concerns that the remainder of the Council had not come equipped with a list of prepared questions.

Mayor Colina commented that Mr. Tripodi's questions were well said and thanked him. No other Council member had any questions for Mr. Tripodi.

Mr. Gordon said that nominations and questions were closed. Mayor Colina asked for votes for Mr. Tripodi to fill the vacant council seat. Councilman Paino asked Mr. Gordon if it was appropriate for him to vote based on the allegations brought forth by Councilwoman DiPaola that evening. Mr. Gordon said it was absolutely appropriate for him to vote unless he felt that he needed to recuse himself. Mr. Gordon said that as far as he was aware, there was no conflict of interest, no criminal violation that he was aware of, and no reason for him not to vote. But he added that it was Councilman Paino's call.

**RC: Council members:**  
**YES: Paino, Rivers, Knoller, Worthington**  
**NO: DiPaola**

Ms. Dray announced it had passed by a roll call vote of 4-1.

Councilwoman DiPaola expressed her dissatisfaction with the procedure by calling it a travesty.

Mr. Gordon stated that the municipal vacancy law also contemplated that once the vacancy was filled by the vote of the Governing Body, that the person would be sworn in and take their seat on the Governing Body.

Mayor Colina read the oath and swore in Mr. Tripodi to the vacant seat.

- Building Department
  - a. Appointment of Michael Heflich as Part Time Electrical Sub Code Official

☞ **Motion** to appoint Michael Heflich as Part Time Electrical Sub Code Official was **moved** by Councilman Paino, **seconded** by Council President Rivers and carried by roll call vote of 5-0.

**RC: Council members:**  
**YES: DiPaola, Paino, Rivers, Knoller, Worthington**  
**ABSTAIN: Tripodi**

VII. APPROVAL OF MINUTES

- Regular Meeting of 12/17/2013
- Sine Die/Reorganization Meeting of 1/7/2014
- Regular Meeting/Budget Work Session of 1/28/2014
- Regular Meeting/Budget Work Session of 2/4/2014
- Regular Meeting of 2/18/2014
- Regular Meeting of 3/4/2014

☞ **Motion** to approve minutes of the Regular Meeting of 12/17/2013, the Sine Die/Reorganization Meeting of 1/7/2014, the Regular Meeting/Budget Work Session of 1/28/2014, the Regular Meeting/Budget Work Session of 2/4/2014, the Regular Meeting of 2/18/2014 and the Regular Meeting of 3/4/2014 was **moved** by Council President Rivers, **seconded** by Councilman Paino and carried by roll call vote of 4-1.

**RC: Council members:**

**YES: Paino, Rivers, Knoller, Worthington**

**NO: DiPaola**

**ABSTAIN: Tripodi**

VIII. CORRESPONDENCE

Mayor Colina announced that copies of the correspondence were available in the office of the Municipal Clerk.

- Letter received February 20, 2014 from Bindu Ravikumar, Boy Scout Troop 67 Committee Member; Re: Eagle Scout recognition
- Letter received February 20, 2014 from Robert J. Salvini, BC American Legion, Inc.; Re: 2014 BC American Legion Convention
- Letter dated February 13, 2014 from Robert Abbatomarco, Executive Director, BC Dept of Planning And Economic Development; Re: Historic Preservation Trust Fund Public Hearing Noticed
- Letter received February 21, 2014 from George McAuliffe, Re: Kudos to Police Sergeant Clark and Patrol Officer Kearns
- Letter dated February 10, 2014 from Glenn Grant, J.A.D., Acting Administrative Director of Courts; Re: Municipal court Information Technology Improvements
- Letter dated February 28, 2014 from Brian Chewcaskie, Esq., Re: Elm Terrace, LLC
- Letter receive March 3, 2014 from Jeanne Martin, Director, Pascack Valley Meals on Wheels; Re: National March for Meals Campaign
- Letter dated March 11, 2014 from Commissioner James Simpson, NJDOT; Re: Safe Routes to School
- Letter dated March 11, 2014 from Commissioner James Simpson, NJDOT; Re: Transportation Alternatives Program
- Letter dated March 6, 2014 from Director Jim Thebery, BC Division of Disability Services; Re: Establishing a local Access for All Committee

IX. UNFINISHED BUSINESS

- Adopting procedure for sending ‘Rice Notices’ – Mr. Gordon said this had been an ongoing issue. He detailed Rice Notice procedures and explained that when you were going to be discussing an employee and they may be changing or affecting or disciplining that employee, that employee had the right to appear at that discussion and had the right to request that that discussion take place, rather than in Executive Session as normal personnel matters would, had the right to have the discussion take place in public and had the right to be represented by counsel at that discussion. He added that in this form of government, the Mayor had the power as the executive of the municipality to request that the discussion regarding an employee or official take place and the power to authorize a Rice Notice to be issued.

The Governing Body as a body had the right to request that a Rice Notice be issued in its capacity as the legislative body. Individual Council members did not have that power. He added that sometimes what ended up happening was that there was a time crunch – an issue came up and they wanted to discuss it because they met as a body only every second week and they wanted to get it on the next agenda. The normal way that happened was that the issue would be presented to the Clerk’s office for the Mayor to act upon it if it was an item within the executive power or if the Mayor did not want to act upon it, then they should have at least a consensus of the Governing Body members’ request that the Rice Notice be issued.

He said the problem they had in the past was that people thought that a Rice Notice would get issued every time they wanted to talk about a department and how budget issues might affect that department and that was not a Rice Notice issue. It did not deal with performance, discipline or how the office functioned by way of employees. He said when they were talking about changing someone’s terms and conditions of employment, for example cutting someone’s hours or eliminating benefits if going part time – that was something that would affect the terms and conditions of employment or they were going to discipline someone. That should take place in Executive Session unless the employee requested that it be in open public. He said that was the procedure they should be following and he thought he had made that clear every time he had been asked that question.

Councilwoman DiPaola, Mr. Gordon and Council President Rivers entered into a lengthy discussion about Rice Notices and the Sunshine Law; and interpretation and opinions thereof. Councilwoman DiPaola asked to see his explanations in writing.

Council President Rivers said he thought they had a procedure in place and to him it was clear and he wanted to move forward. Councilwoman DiPaola asked Mr. Gordon if there was any case law where one Council member Rice Noticed an employee. He said not to the best of his knowledge. Councilwoman DiPaola said she would have to investigate it first. Council President Rivers said they would allow the Councilwoman to do her investigation and talk about it at the next meeting and requested that Ms. Dray add it to the next agenda for continued discussion.

X. New Business:

- Increasing liability limits – Ms. Dray referenced a letter that had been addressed to Mr. Shenkler from the Vozza Agency recommending that the Borough increase their liability limit. She said that her understanding was that it had not been done in a while and it was in their best interests to always have the maximum coverage. Council President Rivers asked Mr. Spataro of the Vozza Agency if this had been brought to the attention of the administrator in the past - that they were low in this area. Mr. Spataro said he thought this was something new as they had pumped up the limits and noted that he thought that it was just good general practice to protect the Borough. Council President Rivers said that from a cost standpoint, it was reasonable and fair and would much rather be safe than sorry. Councilman Paino clarified umbrella and general liability coverage with Mr. Spataro and said that currently the Borough had \$10 million worth of coverage and recommended increasing it to either \$15 million or \$20 million. Council President Rivers suggested investigating this and come back with recommendations and add it to the next agenda.
- No Smoking in Recreational Areas ordinance – Councilwoman DiPaola referenced an ordinance the Board of Health requested to be presented. It would prohibit smoking in parks, playgrounds and recreation areas. She asked the Council to review it and discuss at the next meeting. Council President Rivers suggested they look at the vapor from e-cigarettes and whether it was water vapor, he would rather have that than a cigarette. He also asked about the enforcement policy since it put the enforcement on police officers, employees or elected officials – he did not know if they were able to enforce this. It also said any citizen could file a complaint at any time. Mr. Gordon said that as elected officials they had no enforcement powers any more than any other citizen. Mr. Gordon said he would look at the proposed ordinance. The Council agreed to table this for discussion at an upcoming meeting.

XI. INTRODUCTION OF ORDINANCES – No ordinances were introduced.

XII. ADOPTION OF ORDINANCES

**Second Reading and Public Hearing:**

**1473-14 AN ORDINANCE AMENDING CHAPTER 274 OF THE CODE OF EMERSON ENTITLED VEHICLES AND TRAFFIC ARTICLE VII, SCHEDULE III § 274-39 TITLED ONE- WAY STREETS**

☞ **Motion** to open the meeting to comments from the public on Ordinance #1473-14 was **moved** by Council President Rivers, **seconded** by Councilman Worthington and carried unanimously

Seeing no hands, Mayor Colina asked for a motion to close the meeting to comments on Ordinance #1473-14.

☞ **Motion** to close the meeting to comments from the public on Ordinance #1473-14 was **moved** by Council President Rivers, **seconded** by Councilman Worthington and carried.

☞ **Motion** to adopt Ordinance #1473-14 on second reading was **moved** by Councilman Paino, **seconded** by Councilman Knoller and carried by roll call vote of 5-0.

**RC: Council members:**

**YES: DiPaola, Paino, Rivers, Knoller, Worthington**

**ABSTAIN: Tripodi**

**1474-14 AN ORDINANCE AMENDING CHAPTER 274-50 OF THE CODE OF THE BOROUGH OF EMERSON ENTITLED "SCHEDULE XIV: NO PARKING" TO PROHIBIT PARKING ON THE EAST SIDE OF ARTHUR AVENUE**

☞ **Motion** to open the meeting to comments from the public on Ordinance #1474-14 was **moved** by Council President Rivers, **seconded** by Councilman Worthington and carried unanimously

Seeing no hands, Mayor Colina asked for a motion to close the meeting to comments on Ordinance #1474-14.

☞ **Motion** to close the meeting to comments from the public on Ordinance #1474-14 was **moved** by Councilwoman DiPaola, **seconded** by Council President Rivers and carried.

☞ **Motion** to adopt Ordinance #1474-14 on second reading was **moved** by Councilman Paino, **seconded** by Council President Rivers and carried by roll call vote of 5-0.

**RC: Council members:**

**YES: DiPaola, Paino, Rivers, Knoller, Worthington**

**ABSTAIN: Tripodi**

XIII. REPORTS

- Mayor and Council

Councilwoman DiPaola thanked the Governing Body for appointing Ms. Varoli and Mr. Rooney to the **Historic Preservation Commission**. She asked that Peter Kraycinovich be moved from an Alternate to a Regular Member of the **Shade Tree Commission**. Mayor Colina asked that this be sent to Ms. Dray. She stated that Arbor Day would be celebrated on April 26<sup>th</sup> at Centennial Park and noted that the **Shade Tree Commission** would plant a tree in remembrance of any resident or former resident who had lost their life in the prior year at a ceremony that day. She also discussed fees and late fees imposed for dog and cat licenses through the **Board of Health**. She noted that 100 people just paid \$28.00 because they paid late. One individual wrote a letter to the **Board of Health** and appeared at their last meeting because he was upset about the \$15 late fine because he had a problem with his mail. The **Board of Health** wanted guidance on waiving the late fee and asked if they were allowed to do that. Mr. Gordon said the **Board of Health** could not do that but the Governing Body could on an individual case by case basis by resolution.

☞ **Motion** to make a resolution that the Governing Body waives the \$15.00 late fee for Mr. Martin for his dog license was **moved** by Councilwoman DiPaola, **seconded** by Council President Rivers and carried by roll call vote of 5-0.

**RC: Council members:**

**YES: DiPaola, Paino, Rivers, Knoller, Worthington**

**ABSTAIN: Tripodi**

Councilman Paino gave the February **Building Department** report. He also commended the **Department of Public Works** Superintendent Joe Solimando and his staff for doing a great job this winter.

Council President Rivers gave the February **Police Department** report.

Councilman Knoller said the school would be renovating their athletic track complex and it would be part of the **Board of Education** vote in April. He added that the school was debt free and this item would be fully funded. It would be a community field that would benefit not only the high school but all residents of the Borough and would not impact taxes.

Councilman Worthington had no report.

Mayor Colina said that he had participated in an Eagle Scout Court of Honor where six scouts were honored and he wanted to recognize them in front of the Governing Body. He also noted that he, Councilman Knoller and Mr. Shenkler had met with the **Board of Education** including the field. He also said that there was a shot put champion who would be honored at an upcoming meeting. He said his opinion was that they were on the right path and improving things in the Borough.

- Borough Clerk Carol Dray had no report.
- Borough Attorney Ron Gordon had no report.
- Acting Borough Administrator - Councilman Knoller shared information from Acting Administrator Les Shenkler who was absent from that night's meeting. Several Borough officials were working aggressively with PSEG on improving the longstanding lighting issues in the Borough. A survey was being prepared in collaboration with PSEG that would include upgrades and repairs to fixtures to various areas in town. The Borough was also waiting for credits to its phone lines from Verizon. He was looking for a hybrid solution via VOIP and land lines.
- Councilman Tripodi thanked the Mayor and Council for allowing him to serve on the Governing Body and hoped they could do some great things together and was very interested in moving forward.

#### XIV. 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 to comments from the public was **moved** by Council President Rivers, **seconded** by Councilwoman DiPaola and carried at 9:30 p.m.

Elizabeth Garis, 174 Jordan Road stated that she had served on the Council on three years and that while they sometimes disagreed, it was never done in a disrespectful manner. She discussed her experience the previous year regarding the primary petitions.

Ken Hoffman, 61 Emwood Drive stated that the Council had the opportunity that evening to make the right decision and at least partially remedy the injustice done to Ms. Garis when her primary petition was fraudulently doctored.

Joseph Solimando, DPW Superintendent discussed the drainage system in synthetic fields and requested that he and the Borough Engineer look to see what the impact it would have before the Board of Education moved ahead with it. Council President Rivers said that the Board's engineer had a pretty elaborate plan and thought he would share it with him. He added that because of the elaborate drainage and retention systems planned, it would actually be a benefit to that area; he thought it would be great to have Mr. Solimando involved.

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

☞ **Motion** to close the meeting to comments from the public was **moved** by Council President Rivers, **seconded** by Councilman Knoller and carried.

XV. RESOLUTIONS ON CONSENT AGENDA NO. 76-14

☞ **Motion** to approve Consent Agenda #76-14 was **moved** by Council President Rivers, **seconded** by Councilman Knoller and carried by roll call vote of 5-0.

**RC: Council members:**

**YES: DiPaola, Paino, Rivers, Knoller, Worthington**

**ABSTAIN: Tripodi**

Ca 77-14	Approve Bill List
Ca 78-14	Approve Transfer of Funds within the 2013 Municipal Budget
Ca 79-14	Pistol Range Improvement Contribution Agreement between the Borough of Emerson and the Borough of Park Ridge
Ca 80-14	Issuance of Duplicate Tax Sale Certificate - Texteron LLC; Block 901.02, Lot 9; 70 Patrick Avenue

XVI. CLOSED EXECUTIVE SESSION - Resolution No. 81-14

☞ **Motion** to go back into an executive session to discuss matters exempt from the public as duly noticed by Resolution No. 81-14 was **moved** by Councilwoman DiPaola, **seconded** by Councilman Worthington and carried by roll call vote of 5-0.

**RC: Council members:**

**YES: DiPaola, Paino, Rivers, Knoller, Worthington**

**ABSTAIN: Tripodi**

#14-3/18-08	Personnel-Police Department	N.J.S.A. 10:4-8
#14-3/18-09	Personnel-Professional Services Contract	N.J.S.A. 10:4-7
#14-3/18-10	Potential Litigation - Solid Waste Disposal	N.J.S.A. 10:4-7
#14-3/18-11	Potential Litigation - Armenian Home for Aged	N.J.S.A. 10:4-7

XVII. RECONVENE

☞ **Motion** to reconvene was **moved** by Council President Rivers, **seconded** by Councilman Knoller and carried at 10:20 p.m.

☞ **Motion** to establish a Sub-Committee to review the professional services contracts consisting of Councilwoman DiPaola, Councilman Tripodi and Council President Rivers was **moved** by Council President Rivers, **seconded** by Councilman Paino and carried by roll call vote of 6-0.

**RC: Council members:**

**YES: DiPaola, Tripodi, Paino, Rivers, Knoller, Worthington**

☞ **Motion** to approve signing the Developer's Agreement for the Armenian Home was **moved** by Councilman Worthington, **seconded** by Councilman Knoller and carried by roll call vote of 5-0.

**RC: Council members:**

**YES: Tripodi, Paino, Rivers, Knoller, Worthington**

**ABSTAIN: DiPaola**

XVIII. ADJOURNMENT

With no other business to address, at the request of Mayor Colina, a motion to adjourn was **moved** by Councilman Worthington, **seconded** by Councilman Knoller and carried at 10:53 p.m.

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Carol Dray, RMC CMC CMR