



MINUTES
BOROUGH OF EMERSON
MAYOR AND COUNCIL
June 22, 2011
7:30 P.M.
Borough Hall-Council Chambers
Emerson, NJ 07630



Mayor Colina called the meeting to order at 7:42 p.m. He led the assembled in the salute to the flag and asked for a moment of silence for our troops as we enter the pleasurable summer months that fight for our freedom every day and allow us to take vacations at the shore, enjoy barbecues and ballgames and to discourse peacefully amongst our citizenry.

O.P.M.A. Statement

Mayor Colina read the Sunshine Statement announcing that the meeting of June 22nd, 2011 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 22, 2010; 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, Councilman Browne, Councilwoman DiPaola, Councilwoman Garis, Councilman Lazar, Councilman Rivers, Council President Shaw

Also present were Borough Clerk Carol Dray, Borough Attorney Scott Mooney, and Borough Administrator Joseph Scarpa.

III. EXCUSED ABSENCE OF GOVERNING BODY MEMBER - None

IV. PROCLAMATIONS & CITATIONS - None

V. PUBLIC COMMENT

Mayor Colina brought up the Public Comment portion of the agenda in the order of business. He stated that they have gone through about six months of meetings and thought that it was a good idea to move it behind the New and Unfinished Business portions so that the public could discuss those items. The Governing Body was in consensus and the Mayor said that he appreciated their flexibility. The next agenda will reflect the change ending the trial basis.

Before opening the meeting for comments from the public, Mayor Colina reminded everyone to turn off their cell phones, keep their comments as brief as possible and try to limit them only to governmental issues of concern to an Emerson resident. He further requested that if a subject matter was addressed and answered, to please refrain from repeating it unless they had something new to contribute. A five-minute rule was in effect for each speaker at the discretion of the Council. Mayor Colina asked that everyone do their part to be civil, to the point and respectful of another's point of view and opinion. He further warned that speaking out without recognition would not be tolerated and a second warning could result in removal from the Council Chambers.

☛ **Motion** to open the meeting for comments from the public was **moved** by Councilman Lazar, **seconded** by Councilwoman DiPaola and carried.

Pat Palagonia, 2 Oakland Avenue commented on the Broadway property discussed at the previous meeting. She mentioned permitting a perpetual path to allow neighbors access to the basketball courts without having to walk on Ackerman Avenue. She also encouraged offering the parcels to the adjacent property owners for purchase and not offering variances to anyone to avoid oversized houses in the neighborhood.

Seeing no more 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 Councilwoman Garis and carried.

VI. APPOINTMENTS/RESIGNATIONS - None

VII. CORRESPONDENCE

Mayor Colina stated that copies of the correspondence were available in the office of the Borough Clerk.

- Letter dated May 23, 2011 from Noreen Best, Acting Director, County of Bergen Community Development; Re: Community Development Committee representatives
- Letter dated June 6, 2011 from Bergen County Freeholder Chairman John Driscoll Jr. Re: Formation of Flood Advisory Council
- Letter dated June 15, 2011 from BCUA Executive Director Robert Laux; Re: 2010 Sewer Connection Fee Rebate check in the amount of \$3,074.26.

VIII. UNFINISHED BUSINESS

- Emerson Public Library – Mayor Colina began the discussion by noting that the Library Board of Trustees was invited to the meeting and had respectfully declined. Councilwoman Garis remarked that the Governing Body had many questions for the Trustees but; unfortunately, they were not present to answer them that evening. She indicated that she would be in favor of sending the Trustees formal 'Rice' letters as the next step as a means to receiving the answers to their questions at the next meeting of the Governing Body. She added that Councilman Browne had asked for two documents and she also wanted a list of monies spent on the renovation projects that were completed or partially completed thus far. She said that Library Board of Trustee President Bill Bierman had presented those documents but there were still more additional documents that were not provided. She asked that an OPRA request be sent.

Mayor Colina said that he, Mr. Scarpa, and Councilwomen Garis and DiPaola had met to talk about how they could improve the flow of communication – one of his goals all year long. He said that everyone needed to achieve consistency on items requested and proceed in a formal, civilized manner to get the information. He explained that Councilwoman Garis was the Library liaison and as such was the conduit to the Governing Body. He said that they would look to her to lead the charge there and said that Mr. Scarpa was in charge of borough personnel so they would look to him to understand agreements in place with employees and utilize his position as administrator to directly communicate with the Library Director. He emphasized that they had been quite patient as a Governing Body and had not asked for anything unreasonable. He was disappointed that the Library Board was not at that night's meeting because it was not

an inquisition. Essentially, the Governing Body was seeking the necessary clarification and understanding so that they could present accurate information to the taxpayers.

Councilman Browne commented that he had no desire to micromanage the project but his first question was why anyone would start a half-million dollar project without a signed contract. He also wondered why anyone would start a project when they did not have adequate funding to complete the project. He added that Library itself has maintained that the Library is a Borough owned building; and therefore, the Borough was responsible for the upkeep. He reasoned why then was the Borough not included in managing the project; and why couldn't they direct the Library Board to relinquish control of day to day management to Borough paid professionals - Mr. Scarpa, Ms. Fulgione, Boswell Engineering or an engineer that was knowledgeable in that type of project management. Those professionals could look to see what was planned, what had not been accounted for or what was not anticipated.

Councilman Browne had read emails claiming that the Library was now in need of a new roof despite that the current roof had four more years under warranty. Another email stated that they needed another HVAC system even though one was installed recently and had an estimated seven to ten years left in its lifespan. He emphasized that these were all Borough paid capital improvements. He added that if the Borough was asked to spend money on capital projects, the Borough should be managing this and nothing that he had so far seen would lead him to believe that the renovation project was being managed competently on any level. Despite the Trustees' good intentions and that he felt that the library was a valuable resource for the community, he was concerned and had issues with the way this project had been managed.

Council President Shaw said that he was not sure how logistically practical that plan would be. He said that someone had to take contractual responsibility for operating the project. He saw a real problem with not having responsive answers from the Library and the Governing Body was now compelled to get those answers. He agreed with Mayor Colina that this should be a cooperative effort but they needed the Library Board to come to the Council meeting so they could work with them. Without that, he did not see how he could address the people of Emerson with any level of comfort and that it was impossible to operate in this way.

Mr. Mooney concurred with Council President Shaw's comments adding that the Governing Body was entitled to those answers but reminded everyone that the Library Board was semi-autonomous and had broad powers. He recited part of Title 40 and explained that it really was their project and was not for the Governing Body to step in full time. But because they were semi-autonomous, they still ultimately answered to the Governing Body.

Councilwoman DiPaola remarked that she felt that the Library Board was flying by the seat of their pants. She stated that the carpet removal had been completed by a private company and Councilman Rivers commented that this cost \$6,000.00 while the Sheriff's Office had offered to have inmates remove it at no charge. Mr. Scarpa questioned why the board did not want to use inmates because of liability issues when they did not even have a contract. Councilwoman Garis noted that one of the reasons the board did not want to use the inmates was because the renovation construction crew would be able to rip up carpet tiles during lulls in the project but it turned out that a completely different company was hired specifically to do that work in spite of what the Trustees had claimed as a reason for not utilizing the inmates.

Councilman Lazar commented that there were questions that needed answers and they would be remiss in their obligations to the taxpayers and people of Emerson if they did not ask these questions. He commented that the Governing Body had worked very hard and tried to have a partnership with the library on this project so that they could offer their expertise; had presented ways for the library to save money, for example, the ability to receive free lighting upgrades. But every cost savings measure the Governing Body had offered had been brushed aside by the Library for more expensive ways of doing things. He was very disappointed and had doubt about their ability to manage the project.

Councilwoman DiPaola asked if the library work could be stopped until they sat down with the Library Board, the contractor and architect to see how the taxpayers' money was being spent. She said that the Library Board was made up of some very nice people but some of the board members were making decisions that the other members may not be fully informed about and did not understand the consequences of what was going on.

Mayor Colina said that questions and issues should be funneled through Councilwoman Garis, the Library's liaison, and Mr. Scarpa. He also requested that Mr. Mooney address some of the concerns on a legal basis. Councilman Browne requested that the Borough not make their monthly contribution to the Library or limit it to just what was required and hold the rest in escrow until the situation was resolved. Mr. Scarpa stated that no funds were allocated other than the state mandated amount. He said that he went to a construction meeting last week and found out that the circulation desk, one of the pivotal points of any library, was not part of the project. He said that this item could cost up to \$20,000 but they could have saved \$6000 by using inmates to tear up the carpeting. He also noted that the Library recently hired an interior decorator for \$10,000. If a lighting grant that he obtained had been used, they could have saved another \$30,000 to \$40,000. He commented that they would have had more than enough money, even with just the first two items, to get a circulation desk. Since the desk would need to be handicap accessible, he offered to apply for a Community Development grant, but that would take at least a year and a half.

The Council discussed the validity of an unsigned contract. Councilman Rivers inquired about the borough's risk of liability for work being performed if something was to happen and the contract had not been signed, if the Borough was in a place of increased liability. Mr. Mooney said that it would not be any greater issue than it would otherwise. Councilman Rivers commented that it was something they should consider if in fact it would leave them in a state of increased liability. Council President Shaw said that the Borough was not party to the contract and the Borough would have to show serious and immediate irreparable harm to the Borough in order to stop the job. He noted that the Library Board had come before them and asked for an additional \$90,000.00 and they were asked what it would be used for and they either not prepared or did not want to answer that. He added that the unsigned contract did present a number of interesting legal issues which related not just to liability insurance but also to who was responsible for how proper wages were being paid. He didn't think that stopping the job was the answer, but in a short time they had to address that specific issue since it was critical.

Council President Shaw extracted that over the course of the renovation project that the Library had a had budgeted for the governing body had been informed and was asked to help them fund another \$90,000 for contingencies such as asbestos, duct work, and a new roof. So whatever they had planned apparently was not enough and was not thought out properly. But these other issues related to "their project" now were being translated into "our project". But the Governing Body was only privy to the information

they wanted them to have and were not under their direction. He wondered how the Governing Body could function and even consider expending a dollar on a project that had now become a Borough project yet the Library Board would not communicate with them.

Councilman Rivers encouraged the Council to walk out of the room with a plan of action. Mayor Colina said that Mr. Scarpa and Councilwoman Garis were the liaisons and for all to direct their concerns or questions and requests for information through them in regard to the Library Board and to also conduct more research into the legal authority of the borough over semi-autonomous boards.

Mr. Scarpa asked if he should write a letter stating that the Board was expected to have everything go through Councilwoman Garis and him and they were expected to be kept in the loop. The Council agreed. Councilwoman DiPaola suggested that the library's point of contact should be the Library Director. Mr. Scarpa also remarked that he did not know how many of the trustees had any experience in any type of similar construction project.

Councilman Browne suggested that a special meeting be scheduled to discuss personnel because those issues needed to be addressed. He reminded the assembled that the Library had originally requested an additional \$150,000 in 2008, afterwards revising that figure to \$90,000. Mr. Scarpa added that the Library also wanted a new phone system. He said that those items would be incorporated into a letter and that it would state that the Council expected him to be fully involved with the Director. The Council agreed.

Councilman Lazar remarked that the Trustees were not spending money in a conservative way but rather in a frivolous way. He stated that the architect should have made them aware of and foreseen various issues like the circulation desk considering that he was chosen because he had done so many other libraries. He feared that they would get so buried in debt that they would not have the money to do other essential things and wind up with a half done library. He added that the Trustees were told a year ago that if they wanted to start this project at their own risk with their own funds, to only go as far as their funds would take them. They chose to start it against the Council's advice.

Mr. Scarpa stated that they were not aware of how much the change orders totaled because if they were over 20%, they were in violation of state public bidding law. Council President Shaw discussed scheduling a special meeting. Mr. Scarpa said that he would compose a letter and send it to everyone before mailing it.

Mayor Colina said that he appreciated everyone's effort because they were working not only in the best interests of the Borough, but the Library as well. Councilman Rivers asked Ms. Dray to check on each Councilmember's availability to attain a quorum and schedule a special meeting.

- Broadway Paper Street – Mayor Colina said that Mr. Mooney would discuss this in his report.

- Grant Writer MBI Gluck Shaw – Mr. Scarpa said that this company had offered to do a flat rate for both applications – the fire truck and the ambulance for \$2,500 incorporating the writing and lobbying. He commented that these items represented roughly \$1,000,000.00 in equipment. They would draft a contract if the Governing Body decided to proceed.

☞ **Motion** to approve having Mr. Scarpa proceed with a contract with grant writer MBI Gluck Shaw was **moved** by Councilman Rivers, **seconded** by Councilman Browne and carried unanimously

- Announcement of 9-11 Subcommittee Members – Mr. Scarpa suggested formalizing the names of the members of the committee and suggested that they plan the ceremony whether or not the memorial was done or not. Mayor Colina said that former Councilman, former Marine, Viet Nam veteran and President of the Nam Knights Jack Quigley who had agreed to participate. The Mayor had also spoken to Rabbi Orenstein, Father Dominick and Chief Rossi and asked for everyone's input so that the anniversary could be commemorated in the proper manner.

☞ **Motion** to have the 9-11 Subcommittees consist of nine members with seven chosen by Mr. Scarpa and two additional residents at large was **moved** by Council President Shaw, **seconded** by Councilwoman DiPaola and carried unanimously.

- 2011 Road Program – Mr. Scarpa said that the bids were received and D & L Paving had come in with the lowest bid. They had bid on High Street, Park Avenue, Monsey Road and surfacing Woodside for \$8,800, the only dirt road left in town. Park Avenue would cost \$140,000, Monsey would be \$94,000 and High Street would be divided into two sections, one for \$96,000 and the other section \$49,000. He noted that there was money in leftover bonds to cover the remaining engineering fees. He explained that High Street was in worse condition than Munsey Road, but High Street was eligible for a state aid grant and the engineer thought there was a good chance the Borough could obtain that. They were willing to put off High Street for that reason. He recommended authorizing the bid for Park Avenue, Munsey Road and Woodside Avenue.

☞ **Motion** to proceed with resurfacing Park Avenue, Munsey Road and Woodside Avenue was **moved** by Councilwoman DiPaola, **seconded** by Council President Shaw and carried unanimously.

IX. NEW BUSINESS

- Public Comment – Mayor Colina said that Public Comment has been rescheduled in the agenda based on previous discussion.
- Rescind formal action from meeting of March 1, 2011 – Mr. Mooney explained that the Governing Body voted on Police Chief Rossi's contract and the vote needed to be rescinded due to later changes. In order to vote on a final contract, the previous vote needed to be rescinded first.

☞ **Motion** to rescind the previous vote on Police Chief Rossi's contract was **moved** by Councilman Lazar, **seconded** by Councilman Rivers and carried unanimously.

- Fee Exemption Waiver for Disabled Persons – Mayor Colina said that currently the maximum \$500.00 fee waiver for disabled persons had been set per ordinance last year. He and Council members had been in conversation with Construction Official Mike Sartori and a family in town that was looking for monetary relief. The Governing Body wanted to be compassionate and waive fees associated with a persons’ disability for work done in a home.

Councilwoman DiPaola asked if the Governing Body wished to change the ordinance to increase the amount above \$500.00. Council President Shaw said that he was in favor of increasing the waiver because he was incredibly moved by the information he received from a family in town and the hardship they were experiencing. He wanted to extend a compassionate hand not just to that family but other members of the community as well. Councilwoman DiPaola commented that Mr. Sartori had informed her that Emerson was one of the most generous municipalities on permit waivers for the disabled. Council President Shaw said that the family he spoke with informed him that 14 towns in New Jersey waived all construction fees for disabled residents. He considered a \$500.00 fee exemption just a token amount when taking into consideration the issues they disabled faced. Mr. Mooney inquired about the criteria was for the exemption. Councilman Lazar recommended that improvements made to accommodate disabilities and only those improvements that were specific to that disability should be completely waived.

Mr. Mooney advised that he could put together a draft ordinance for review. Councilman Rivers inquired about the total permit fees for the family being discussed. Councilwoman DiPaola said that they totaled between \$3,500.00 and \$4,000.00. She noted that the ordinance would apply to all disabled Emerson residents in private residences. The Governing Body agreed that the wavier would apply to improvements made in connection with handicapped disability, and the determination would be made by the appropriate borough official, the Construction Official.

X. INTRODUCTION OF ORDINANCES

Mayor Colina announced that Ms. Dray would read the following ordinance by title and they would be further considered at a Public Hearing to be held on July 12th, 2011 at 7:30 p.m. in the Council Chambers of the Borough Hall, Municipal Place, Emerson, N.J. and published in the July 1st, 2011 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:

1427-11 AN ORDINANCE AMENDING CHAPTER 274 OF THE CODE OF THE BOROUGH OF EMERSON ENTITLED VEHICLES AND TRAFFIC ARTICLE VII, § 274-53 TITLED SCHEDULE XVII: TIME LIMIT PARKING

☞ **Motion** to approve Ordinance #1427-11 on first reading was **moved** by Councilwoman DiPaola, **seconded** by Councilwoman Garis and carried unanimously by roll call vote:

RC: Council members:

YES: Browne, Rivers, DiPaola, Shaw, Garis, Lazar

XI. REPORTS

- Borough Attorney – Mr. Mooney discussed Spruce Avenue and the section of the paper road and that the Borough may be able to sell it or have the option of vacating it. The determination would be made by the title company performing an ownership search. It would be based on how the maps were drawn up in the past and how they took possession of that particular paper road. If Emerson's forefathers were smart enough and took title as fee simple, then the Borough could sell it, first offering it to the adjoining neighbors, and if they declined, then it could be put out to bid. Mr. Mooney said that he expected an answer soon and would share it with the appropriate parties immediately.

Mr. Mooney also said that the Borough did own 156 Palisade Avenue, had title to it and could sell it. Since the area was 4000 square feet, someone would need a variance to build on it. Mr. Scarpa remarked that they had received an appraisal in 2008 for \$100,000.

☞ **Motion** to put Block 715, Lot 2 - 156 Palisade Avenue out to bid was **moved** by Councilwoman, **seconded** by Councilman Rivers and carried unanimously.

Mr. Mooney commented on procedural issues regarding the Borough Code and removal of members of Boards and Commissions. He explained that some Boards and Commissions had specific sections that spoke directly to that area while others did not. He had been asked to draft a catch all ordinance to be put in the Personnel section of the codebook to allow for removal. He said that he would distribute it for review.

- Borough Clerk Carol Dray had no report.
- Administrator Joe Scarpa said that he had discussed everything earlier in the meeting.
- Mayor & Council:
 - Councilman Browne had no report.
 - Councilman Rivers had no report.
 - Councilwoman DiPaola gave the **Building Department** and **Volunteer Ambulance Department** reports for the month of May. She noted that all emergency services in the Borough performed a reenactment of a drunken driver crash for the benefit of Emerson High School seniors. She said that it was quite effective and that Ambulance Corps Captain Dave Mason even got a helicopter to come in and land. The students appeared to be really affected by it and she hoped that they would all learn a lesson from it about drinking and driving and not driving carelessly.

She also reported that the check had been returned by the vendor for the ambulance. She requested that the purchase for a new EVAC cab and chassis be put out to bid.

☞ **Motion** to prepare specifications and go out to public bidding a new Emerson Volunteer Ambulance Corps apparatus and chassis was **moved** by Councilwoman DiPaola, **seconded** by Councilman Rivers and carried unanimously.

- Councilman Lazar gave the May **Police Department** report. He had arranged a meeting between the head of the Soccer Commission and Mr. Kim of the Emerson Golf Club and had scheduled a meeting with the Borough Engineer, Berge Tombalakian of Boswell Engineering to make a presentation and recommendations at the next meeting of the Hillman Field Subcommittee. He also discussed the last meeting of the **Historic Preservation Commission** and their concerns about the events that transpired at their last meeting with the Governing Body. He gave them some direction and encouraged them and said would move forward.

Mayor Colina requested that Councilman Lazar stay involved with the Emerson Golf Course and he assured the Mayor that he would.

- Councilwoman Garis said that she had attended the 8th grade and high school graduations and both were very pleasurable.
- Council President Shaw had no report.
- Mayor Colina said that the trauma reenactment headed up by Lieutenant Buono and the Borough's emergency services was really well done and very effective. He hoped and prayed that everyone remained safe during the summer. He had visited a second grade class taught by Mrs. Rainieri and was sad to hear that she was retiring after 20+ years with the school system and wished her the best. He closed by wishing everyone a happy and safe summer and appreciated everyone's efforts in maintain the good 'Family Town' vibe.

XII. RESOLUTIONS ON CONSENT AGENDA NO. 120-11

☛ **Motion** to approve Consent Agenda Resolution #120-11 was **moved** by Councilman Lazar, **seconded** by Council President Shaw and carried by roll call vote.

RC: Council members:

YES: Browne, Rivers, DiPaola, Shaw, Garis, Lazar

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| Ca 121-11 | Approve Bill List |
| Ca 122-11 | Approve Mayor & Council Meeting Minutes of May 17, 2011 |
| Ca 123-11 | Approve 2011-2012 Liquor License Renewals: <ul style="list-style-type: none">▪ Gregory T's Inc. - 0214-33-001-006▪ Emerson F&B LLC - 0214-33-006-007▪ Emerson Hotel - 0214-33-003-005▪ Jack Fricke Inc. - 0214-33-005-002▪ Hackensack Golf Club - 0214-33-004-004▪ Scalco, Inc. - 0214-44-002-002▪ K. D. Liquors, L.L.C. - 0214-44-007-009▪ Emerson American Legion - 0214-31-009-001 |
| Ca 124-11 | Approve hiring of DPW Temporary Summer Employees
Brian Donaghy and Michael Kraus |
| Ca 125-11 | Tax Appeal Settlement – 175 Kinderkamack Rd.,
Block 422, Lot 11 – Mousserie |

XIII. CLOSED EXECUTIVE SESSION - Resolution No. 126-11

Mayor Colina noted that an item related to a police personnel issue was pulled due to nothing due to report by the Borough Attorney.

☛ **Motion** to go into an executive session to discuss matters exempt from the public as duly noticed by Resolution No. 126-11 excluding #11-6/23-25 was **moved** by Councilman Rivers, **seconded** by Councilwoman DiPaola and carried by roll call vote.

RC: Council members:

YES: Browne, Rivers, DiPaola, Shaw, Garis, Lazar

#11-6/23-24	Police Chief Contract	N.J.S.A. 10:4-7
#11-6/23-25	Personnel – Police Dept. – Ogden	N.J.S.A. 10:4-8
#11-6/23-26	Litigation- Callagy	N.J.S.A. 10:4-7
#11-6/23-27	Real Estate Acquisition	N.J.S.A. 10:4-5

XIV. RECONVENE

☛ **Motion** to reconvene was moved by Councilman Rivers, seconded by Council President Shaw and carried.

XII. 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 Browne and carried at 10:10 p.m.

Carol Dray, RMC/CMC/CMR
(Proofed 08/12/11)

July 12, 2011