



MINUTES  
BOROUGH OF EMERSON  
MAYOR AND COUNCIL  
January 17, 2017  
7:30 P.M.  
Borough Hall-Council Chambers  
Emerson, NJ 07630



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I. CALL TO ORDER

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

Mayor Lamatina announced that in order to accommodate the public, the Governing Body had consented to allow two additional opportunities for specific public comment. The first was under 'Financial Business' so that questions concerning the PILOT agreement could be asked and answered. The second was under 'Unfinished Business' to accept comments on the redesignation of Block 419 as an area in need of redevelopment.

II. ROLL CALL

Mayor Lamatina asked Ms. Dietsche to call the roll of the Governing Body.

**Present:** Mayor Lamatina, Councilwoman DiPaola, Councilman Downing, Councilman Falotico, Council President Knoller, Councilman Lazar

**Absent:** Councilman Worthington

Also present were Assemblywoman Holly Schepisi, Borough Administrator Robert S. Hoffmann, Special Counsel Douglas Doyle, substituting for Borough Attorney Wendy Rubinstein, and Borough Clerk Jane Dietsche.

Ms. Schepisi said she represented 23 municipalities and was attempting to visit a Council meeting in each community. She said local municipalities were facing a host of issues related to affordable housing and school funding. She was available to work with everyone to provide clarification on affordable housing obligations as well as try to get more fair school funding. She said her office was in Westwood and asked everyone to reach out to her. She offered legislative help for anything impacting the community.

Mr. Hoffmann thanked Assemblywoman Schepisi for her help with the Pascack Valley Shared Service group. He also thanked members of her staff, Senator Cardinale and Assemblyman Auth since they have provided timely assistance on some perplexing issues.

III. EXCUSED ABSENCE OF GOVERNING BODY MEMBER

- Absence of Councilwoman DiPaola from Special Meeting of December 20, 2016

☞ **Motion** to excise the absence of Councilwoman DiPaola from the Special Meeting of December 20, 2016 was **moved** by Council President Knoller, **seconded** by Councilman Downing and carried unanimously.

IV. PROCLAMATIONS & CITATIONS

- Swearing in of Probationary Patrol Officers Connor Murphy and Trace McDermott

V. RESOLUTION NO. 48-17 - BOROUGH PROFESSIONAL APPOINTMENTS – Non-Fair and Open Contract Pursuant to the Provisions of N.J.S.A. 19:44a-20.4

Councilwoman DiPaola requested that each resolution be voted on separately.

PROFESSIONAL	TERM	NAME
49-17 Borough Attorney	1 Year	DeCotiis, Fitzpatrick, Cole & Giblin Wendy Rubinstein, Esq.
50-17 Land Use Board Attorney	1 Year	Morrison Mahoney LLP Christopher Martin, Esq.
51-17 Labor Attorney	1 Year	Ruderman Horn & Esmerado Mark Ruderman, Esq.
52-17 Borough Engineer	1 Year	Boswell Engineering Gary Ascolese
53-17 Borough Planner	1 Year	Brigette Bogart Planning & Design Professionals
54-17 Borough Prosecutor	1 Year	Arthur Balsamo, Esq.
55-17 Alternate Prosecutor	1 Year	Christopher Martin, Esq.
56-17 Public Defender	1 Year	Jeffrey Carney, Esq.

☞ **Motion** to approve Resolution No. 49-17 Appointment of Borough Attorney Wendy Rubinstein, Esq., DeCotiis Fitzpatrick, Cole & Giblin for Calendar Year 2017 was **moved** by Council President Knoller, **seconded** by Councilman Lazar and carried by a roll call vote of 4-1.

**RC: Council members:**

**YES: Falotico, Lazar, Knoller, Downing**

**NO: DiPaola**

☞ **Motion** to approve Resolution No. 50-17 Appointment of Land Use Board Attorney Chris Martin, Esq., Morrison Mahoney LLP for Calendar Year 2017 was **moved** by Council President Knoller, **seconded** by Councilman Lazar and carried by a roll call vote of 5-0.

**RC: Council members:**

**YES: DiPaola, Falotico, Lazar, Knoller, Downing**

☞ **Motion** to approve Resolution No. 51-17 Appointment of Labor Attorney Mark Ruderman, Esq., Ruderman, Horn & Esmerado for Calendar Year 2017 was **moved** by Council President Knoller, **seconded** by Councilman Downing and carried by a roll call vote of 5-0.

**RC: Council members:**

**YES: DiPaola, Falotico, Lazar, Knoller, Downing**

☞ **Motion** to approve Resolution No. 52-17 Appointment of Borough Engineer Gary Ascolese, P.E., and Boswell Engineering for Calendar Year 2017 was **moved** by Council President Knoller, **seconded** by Councilman Lazar and carried by a roll call vote of 5-0.

**RC: Council members:**

**YES: DiPaola, Falotico, Lazar, Knoller, Downing**

☞ **Motion** to approve Resolution No. 53-17 Appointment of Borough Planner Brigette Bogart, Bogart Planning & Design Professionals for Calendar Year 2017 was **moved** by Council President Knoller, **seconded** by Councilman Falotico and carried by a roll call vote of 4-1.

**RC: Council members:**

**YES: Falotico, Lazar, Knoller, Downing**

**NO: DiPaola**

☞ **Motion** to approve Resolution No. 54-17 Appointment of Borough Prosecutor Art Balsamo, Esq. for Calendar Year 2017 was **moved** by Council President Knoller, **seconded** by Councilman Falotico and carried by a roll call vote of 4-1.

**RC: Council members:**

**YES: Falotico, Lazar, Knoller, Downing**

**NO: DiPaola**

☞ **Motion** to approve Resolution No. 55-17 Appointment of Alternate Prosecutor Chris Martin, Esq. for Calendar Year 2017 was **moved** by Council President Knoller, **seconded** by Councilman Lazar and carried by a roll call vote of 5-0.

**RC: Council members:**

**YES: DiPaola, Falotico, Lazar, Knoller, Downing**

☞ **Motion** to approve Resolution No. 56-17 Appointment of Public Defender Jeff Carney, Esq. for Calendar Year 2017 was **moved** by Council President Knoller, **seconded** by Councilman Falotico and carried by a roll call vote of 5-0.

**RC: Council members:**

**YES: DiPaola, Falotico, Lazar, Knoller, Downing**

#### VI. MINUTES FOR APPROVAL

- Regular Meeting Minutes of December 20, 2016
- Closed Session Regular Meeting Minutes of December 20, 2016

☞ **Motion** to approve the Regular Meeting Minutes of December 20, 2016 as amended and the Closed Session Regular Meeting Minutes of December 20, 2016 was **moved** by Council President Knoller, **seconded** by Councilman Lazar and carried unanimously.

- Sine Die/Reorganization Meeting Minutes of January 3, 2017

☞ **Motion** to approve the Sine Die/Reorganization Meeting Minutes of January 3, 2017 as amended was **moved** by Council President Knoller, **seconded** by Councilman Downing and carried unanimously.

#### VII. CORRESPONDENCE

Mayor Lamatina announced that copies of the correspondence were available in the Office of the Municipal Clerk.

- Letter dated December 21, 2016 from Dan O'Brien; Re: Procedure to remove property located at 17 A-C Palisade Avenue from Redevelopment Zone
- Letter dated November 16, 2016 from Pam Their, Compliance Inspector, NJDEP; Green Acres Program Compliance Approval
- Letter/Petition received December 20, 2016 from Jill McGuire et.al.; Re: Limit building height to three stories in Redevelopment Zone
- Email received December 19, 2016 from Ann Arnold; Re: Anti BDS Resolution
- Resolution dated December 20<sup>th</sup> from City of Hackensack; Re: Mutual Aid

- Letter dated December 16, 2016 from Beth Ravit, Co-Director, Rutgers University Center for Urban Environmental Stability; Re: Master Plan for Bergen County Parks System
- Email dated January 2, 2017 from Jill McGuire; Re: PILOTS, historic significance of Borough Hall, Land Use Board transcript of 12/20/16
- Email dated January 4, 2017 from Jim and Kara Sabino; Re: Flooding on Pavonia Avenue
- Email dated January 7, 2017 from Jill McGuire; Re: Borough Hall murals
- Resolutions from Bergenfield, Westwood, Teaneck, Northvale, et. al., Re: Mutual Aid Plan & Rapid Deployment Force – Interlocal Service Agreement
- Email dated January 13, 2017 from Alexandria Acosta; Re: Bergen County Parks Master Plan Community Information Sessions
- Emails dated January 14, 2017 from Jill McGuire; Re: Request for clarification of Ordinance 1566-17; Request for tabling of repeal and replace Ordinances 1566-17 and 1567-17
- Email dated January 17, 2017 from Lorraine McQueeney; Re: Mount Laurel obligations

#### VIII. FINANCIAL BUSINESS

- Resolution No. 57-17 Bill List

☞ **Motion** to approve Resolution No. 57-17 Bill List was **moved** by Councilman Lazar, **seconded** by Councilman Falotico and carried by a roll call vote of 5-0.

**RC: Council members:**

**YES: DiPaola, Falotico, Lazar, Knoller, Downing**

- Address questions related to PILOT agreement

Special Counsel Matt Karrenberg, Esq. of DeCotiis, Fitzpatrick, Cole & Giblin was present to answer questions related to payments in lieu of taxes, better known as PILOT agreements.

- Public Comment on PILOT agreement only

☞ **Motion** to open the meeting to comments from the public on the PILOT agreement only was **moved** by Councilwoman DiPaola, **seconded** by Councilman Downing and carried at 8:16 p.m.

Mr. Karrenberg said he was present to discuss the financial and PILOT agreements with JMF Properties. He noted that he had given a financial presentation in August regarding the terms of the financial agreement. At that time, the agreement was approved pursuant to Ordinance at the public hearing. He was aware of additional questions from the public which the Borough addressed through a memorandum in August. He added that the math was a little bit off in one or two items in the original memo and a new memo had been prepared and posted which was easier to explain to the public.

He stated that the land was not exempt from taxation – the land was assessed and taxed the same way all other properties in the Borough were taxed. The PILOT was based upon a calculation as a percentage of the annual gross revenue – which was basically the rent – and initially that was 10%. He provided a detailed explanation of the calculation process.

Councilman Lazar asked if the property values would increase when the development was done and if so, whether the taxes on the property would increase. Mr. Karrenberg confirmed that this was the case and estimated the value of the land would likely jump from \$5.7 - \$6 million today to approximately \$9 million. Mayor Lamatina noted that the value of the land would range from approximately \$2,775,000 to \$2,800,000 and the improvements would be around \$2,900,000, for a total value of approximately \$5,775,000.

Councilwoman DiPaola said she thought the number of students that would come out of 147 or possibly more apartments was low. What residents could not wrap their heads around was the amount of money going to go to the school because they felt there would be more students coming out of the development than the money that was going to be allocated from land taxes to the school.

Mr. Karrenberg explained how the number of school children was calculated and said a much lower number of school children would be anticipated when the property was considered a transit oriented development.

Councilman Lazar asked what would happen if there were more school age children generated from the development than anticipated and the school needed more money. If that was the case, he asked if some of the money be redirected from the PILOT to the school to compensate them if the Governing Body chose to do that. Mr. Karrenberg said it was a trickier question than it sounded. All governments in New Jersey could only do what they were statutorily authorized to do. There was no express statutory authorization to take PILOT money from the Borough's budget and give it to the school. But he added there were probably ways it could be done. He did point out that at the end of the day it was a net neutral issue.

Councilwoman DiPaola asked if Mr. Karrenberg had a hand in the terms of the thirty year PILOT or if he thought it was beneficial. Mr. Karrenberg said all deals were negotiated and it was statutorily permitted so it was part of the negotiations. He said that while Emerson was a much nicer town than where a lot of these types of developments occurred, it was an untested market. JMF would be building something downtown that did not exist and had not existed. It came with some risk and was a tough site assemblage with a lot of risk in trying to acquire multiple properties as opposed to having one property where negotiations were easier. He noted that the deal was not what JMF originally requested which was thirty years at a flat ten percent.

Mr. Karrenberg reviewed the PILOT agreement's financial details. He said that the total tax collected from the properties in 2015 was about \$146,000. The Borough received about \$45,000, the school received about \$88,000 and the County received about \$15,000. Assuming the development was completed based on the analysis, the land tax itself would be \$236,000. The Borough would receive the same percentage it received today which would be about \$72,000, the school would receive \$142,000 and the County would receive about \$23,000. When those numbers were added to the 95/5 split of the remaining PILOT, the Borough under the remaining PILOT would receive \$115,000 and the County would receive about \$6,000. The school would not receive any of the remaining PILOT amounts pursuant to the long term tax exemption. The total amount would become \$187,000 for the Borough, \$142,000 for the school and about \$29,000 for the County equaling \$358,000. Each entity would do better under the development than they did under the current years. He projected it out over a thirty year period and the analysis indicated that the development would pay collectively in PILOT and land taxes approximately \$16 million over the thirty year period. Under the current use, assuming no additional new improvements or new developments, but also increasing the current taxes by 2%, it would result in about \$6 million, a \$10 million increase.

Councilwoman DiPaola said the numbers sounded great but questioned what would happen if the development turned into a big white elephant and they were not getting the anticipated revenue or could not sustain the rents they anticipated. She asked what would happen if more affordable housing had to be made available just to make ends meet and then there were more children. She said that in that case, Emerson would be stuck in a 30 year agreement with a redeveloper and the Borough would be bleeding because funds had to be given to the school system to sustain the children. Mr. Karrenberg responded that it depended how big the white elephant was. He said his studies indicated that the rents seemed relatively in-line with about 25 properties in surrounding municipalities. To the extent the revenues were lower, the PILOT would be lower; to the extent they were higher, the PILOT would be higher. He explained that in the agreement and in accordance with law, there was a minimum annual service charge. Under law it could not be lower than what it was today - \$146,000. If the development was completely built, his expectation was that the land tax, even if the rents were terrible, would be more than \$146,000.

Councilwoman DiPaola asked if the Borough was locked into this agreement for residents' clarification. Mr. Doyle explained that the Governing Body had authorized this after a first reading and second reading and a full hearing that took place during the summer. She said she just wanted everyone to know that there was no going back and that the presentation was just for education and information. Mr. Doyle and Mr. Karrenberg agree.

Dot Haight, 84 Lincoln Boulevard asked Mr. Karrenberg questions related to the PILOT agreement and differences between the original and revised memo.

Mr. Doyle stated that the decision to approve the financial agreement was not based on the erroneous data. Mr. Karrenberg said that the \$358,000 was the estimated scenario for the total amount and more than likely, the developer was holding back because they did not want people to think they were going to make too much money. Therefore, this led them to be generally conservative in their application. It did not mean it would be true in the future but to the extent the rents went up, the \$358,000 would go up. The Borough had the right to audit annually so they could not hide money. In addition, the Borough also had the right under the long term tax exemption law to limit the amount of profit they could make. If a developer received a tax abatement and made over 12% profit, that amount had to be disgorged back to the town.

Council President Knoller thanked Mr. Karrenberg for redoing the document and said the original had been confusing. He said the current version was much easier to follow. He hoped it answered Ms. Haight's questions and apologized for the delay in responding to her.

Ms. Haight asked if the developer could appeal the land value if they could not fill their units and possibly pay less in land tax. Mr. Karrenberg noted that they could after the first year and under statute the developer had the right after the first year and any time thereafter to terminate the PILOT.

Councilman Lazar noted that the Emerson Grand had all the apartments rented out before it was even finished and had a waiting list. He said that because of the convenient mass transportation options into New York City for professionals, it was a very desirable location. He found it hard to believe that they couldn't fill it up 110% based on past experience in the area. He found the nay saying about whether they could fill the units very disconcerting.

Mr. Gonzalez, Maepaul Drive asked if the apartments above the stores on Kinderkamack Road were occupied and said they were looking to add more apartments when there were vacancies in town.

Toni Plantamura, owner of Dairy Queen, 13 Kinderkamack Road inquired about appealing taxes in a PILOT agreement.

Ernest Van Der Heuvel, 32 Lake Road, Congers, NY asked about taxpayer appeals in a PILOT agreement.

Jim Tabacchi, 378 Hardenburg Avenue, Demarest said he represented the owners of Cork and Keg at 188 Kinderkamack Road and asked about their lease. Mayor Lamatina explained that this open session was only for comments related to the PILOT agreement.

Seeing no more hands, Mayor Lamatina asked for a motion to close the meeting to comments from the public on the PILOT agreement only.

☛ **Motion** to close the meeting to comments from the public on the PILOT agreement only was **moved** by Council President Knoller, **seconded** by Councilman Downing and carried.

Mr. Karrenberg departed the Council Chambers.

#### IX. UNFINISHED BUSINESS

- **Discussion of Resolution No. 58-17 - RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF EMERSON, COUNTY OF BERGEN, STATE OF NEW JERSEY DETERMINING THAT BLOCK 419, LOTS 1, 2, 3, 4, 5, 6.01, 6.02, 7, 8, 9 AND 10, ON THE OFFICIAL TAX ASSESSMENT MAP OF THE BOROUGH OF EMERSON QUALIFY AS AN AREA IN NEED OF REDEVELOPMENT, SPECIFICALLY A CONDEMNATION REDEVELOPMENT AREA, PURSUANT TO THE PROVISIONS OF THE LOCAL REDEVELOPMENT AND HOUSING LAW (N.J.S.A. 40A:12A-1 ET SEQ.) AND SHALL CONTINUE TO BE PART OF THE CENTRAL BUSINESS DISTRICT REDEVELOPMENT AREA:  
**Addressing Land Use Board's Recommendation to Redesignate As An Area in Need of Redevelopment of Block 419 of the Redevelopment Zone****

Mayor Lamatina said the Governing Body was willing to hear any comments the public might have on the redesignation of Block 419. He noted that the resolution only affected Block 419 which encompassed the area from Linwood Avenue north to Lincoln Boulevard on the west side of Kinderkamack Road with the western border of the railroad tracks. He added that the Governing Body would only accept comments from the public on that area.

- Public Comment on Resolution No. 58-17 only

☛ **Motion** to open the meeting to comments from the public on Resolution No. 58-17 only was **moved** by Councilwoman DiPaola, **seconded** by Councilman Falotico and carried at 8:35 p.m.

Mayor Lamatina recognized Borough Planner Brigitte Bogart who was also present to answer questions.

Mr. Doyle stated that this was not an opportunity for a hearing or expanding the record. The Municipal Land Use Law and the Legislature had made it very clear how to designate an area in need of redevelopment. The Governing Body had done that and done it correctly. The Land Use Board had proceeded in accordance with the law. Several months ago, the Governing Body had directed that the Land Use Board undertake a study of the existing redevelopment area for the Central Business District. In 2004 the Governing Body had requested that the Land Use Board at that time perform that study which they did. They made a recommendation back to the Mayor and Council. The Mayor and Council adopted a resolution in 2004 designating all these properties that they recommended be considered as an area in need of redevelopment.

This year the Governing Body again asked the Land Use Board to restudy the area. When he and Ms. Bogart looked at the volume and work that needed to be done, it was determined that they should probably put them in order of priority, that priority being that they had a developer who was willing to move forward with respect to Block 419 and the lots therein. At a point in the future, the Land Use Board would take up the remaining blocks and lots in the Central Business District, but before they did that they would re-notice all property owners indicating when a hearing would take place. He said that no further hearings would take place on any other lots within the Central Business District unless and until those individual property owners receive notice in the same notice that they received notice before.

He said there had been some concern about the notices indicated that they were for a condemnation redevelopment area. He explained that in the first study in 2004 and determination in need of redevelopment, the Governing Body had authorized to proceed with condemnation with limited success. Between 2004 and the new notices, the legislature said it was necessary to indicate if there was a potential use of power of eminent domain. At this evening's meeting, the Governing Body could accept and/or reject the findings of the Land Use Board as it related to Block 419. No other properties were being considered. In addition, he noted that Ms. Bogart was present to answer procedural questions only and not give further testimony.

Richard DeAngelis, Esq. representing the owner of 214 Kinderkamack Road was opposed to the vote to designate the properties as a condemnation zone and requested that the Governing Body reject the resolution. He said that once it passed, he would be filing a lawsuit in Bergen County Superior Court and noted that the process was procedurally flawed in 2004. He asked that if the Governing Body did not reject the resolution, that it be remanded and sent back to the Land Use Board for further hearings. He further commented that the area was not blighted.

Phyllis Rooney, 5 Oakland Avenue stated that Emerson would become Pottersville instead of the Family Town. She asked that the lives of business owners be considered since they cared about the town. She discussed vacancies in garden apartments in the area and asked the Governing Body to reconsider their decision.

Ken Hoffman, 61 Emwood Drive discussed the rights of property owners and said the Governing Body should heed Mr. DeAngelis' warning. He questioned the designation of blight and whether it affected the health, safety and welfare of the community. He said a court case would be expensive, lengthy and ultimately unsuccessful.

Dan O'Brien, 17A Palisade Avenue commented on quotes in the Pascack Press by Mayor Lamatina. He said misinformation was being put out to the public. He was opposed to the blight designation of properties in the redevelopment zone and said the Governing Body was not protecting the residents. He noted that if there was blight in town, it was due to the Governing Body not enforcing property maintenance ordinances.

Bill Price, 9 Emwood Drive said information had not been communicated well at the December Land Use Board meeting. He also discussed traffic congestion in the downtown area and said that additional apartments would make it worse.

Ernest Van Der Heuvel, 32 Lake Road, Congers, NY thanked Councilwoman DiPaola for caring about the taxpayers. He asked Ms. Bogart about her Oath of Office. He requested that the Governing Body table the deal because they were not listening to taxpayers.

Stan Woods, 56 Maepaul Drive asked the Governing Body to be very careful about their decision because he did not think things were going in the right direction.

Paul Hulbert, 55 Jefferson Avenue asked if the resolution only applied to Block 419. He suggested holding landowners accountable for the condition of their properties and thought they would make a good faith effort to redevelop their properties on their own.

Dominic Scala, owner of Cork and Keg, 188 Kinderkamack Road said that not all business owners were able to attend the meeting but they did care. He asked for details about having his business relocated.

Jack Pousty, 184 Kinderkamack Road said he did not know when meetings took place and was very disappointed with the negotiations. He disapproved of the project.

Steve Paino, 51 Colonial Road inquired about the property assessments of Block 419. He requested that Kinderkamack Road improvements be finished and allow property owners to redevelop on their own.

Bob Petrow, 21, 23, 33, 50 Chestnut Street said that the property owners in the room all stood in solidarity with the owners of Block 419 properties. He said that if Block 419 went, others would be next and he did not want Emerson to turn into a city.

☛ **Motion** to close the meeting to comments from the public on Resolution No. 58-17 only was **moved** by Councilman Lazar, **seconded** by Councilman Falotico and carried at 9:55 p.m.

☞ **Motion** to approve Resolution No. 58-17 - **RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF EMERSON, COUNTY OF BERGEN, STATE OF NEW JERSEY DETERMINING THAT BLOCK 419, LOTS 1, 2, 3, 4, 5, 6.01, 6.02, 7, 8, 9 AND 10, ON THE OFFICIAL TAX ASSESSMENT MAP OF THE BOROUGH OF EMERSON QUALIFY AS AN AREA IN NEED OF REDEVELOPMENT, SPECIFICALLY A CONDEMNATION REDEVELOPMENT AREA, PURSUANT TO THE PROVISIONS OF THE LOCAL REDEVELOPMENT AND HOUSING LAW (N.J.S.A. 40A:12A-1 ET SEQ.) AND SHALL CONTINUE TO BE PART OF THE CENTRAL BUSINESS DISTRICT REDEVELOPMENT AREA** was **moved** by Councilman Downing, **seconded** by Council President Knoller and carried by a roll call vote of 4-1.

**RC: Council members:**

**YES: Falotico, Lazar, Knoller, Downing**

**NO: DiPaola**

- Discussion of Selection of Architect – Mr. Hoffmann said the original eight architects who had submitted Requests for Proposals had been whittled down to four finalists. He asked the Governing Body to make a first and second choice so the Borough could move forward with needed work at the Department of Public Works facility, as well as relocate the Ambulance Corps and improve Borough Hall. The Governing Body discussed the length of the contract and what projects should be worked on first and agreed to a limit of three years instead of five. Council consensus was that their first choice was Joseph Cecco of Axis Architectural Group and their second choice was Arcari and Iovino Architects. Mr. Hoffmann said the resolution was included in the Consent Agenda and the term would be reduced from five to three years.

#### X. NEW BUSINESS

- PSEG Road Opening – Randolph Avenue – Mr. Hoffmann said he would be sending the Governing Body a memo related to a meeting with PSE&G. They wanted to replace gas lines at three locations as part of the Energy Strong Program on Randolph Avenue. PSE&G did not want to pay for repaving the entire road. He stated that the Borough had passed an ordinance requiring that if a road was opened, it had to be repaved. He would keep the Governing Body informed.
- Borough Hall WPA Designation - Policy Decision – Mr. Hoffmann noted that it was necessary to make improvements to Borough Hall but there was no need to rush the process. He also mentioned the WPA artwork and other interest about the designation of Borough Hall. He said there was not a need to rush into this and that work should be done with the architect, the Historic Preservation Commission and Borough staff to determine the best course of action. The Governing Body consensus was to preserve the Borough's history.

#### XI. INTRODUCTION OF ORDINANCES

Mayor Lamatina announced that Ms. Dietsche would read the following ordinances by title and they would be further considered at a Public Hearing to be held on February 7th, 2017 at 7:30 p.m. in the Council Chambers of the Borough Hall, Municipal Place, Emerson, N.J. and published by title in the January 20, 2017 edition of the Ridgewood News. He added that these ordinances were 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:**

**1536-17** AN ORDINANCE REPEALING AND REPLACING CHAPTER 163 HISTORIC PRESERVATION, ARTICLE I HISTORIC PRESERVATION COMMITTEE, OF THE CODE OF THE BOROUGH OF EMERSON

☞ **Motion** to introduce Ordinance #1536-17 on first reading was **moved** by Councilman Falotico, **seconded** by Councilman Lazar and carried by a roll call vote of 4-1.

**RC: Council members:**

**YES: Falotico, Lazar, Knoller, Downing**

**NO: DiPaola**

**1537-17** AN ORDINANCE TO AMEND CHAPTER 27. ENVIRONMENTAL COMMISSION. REPEAL CHAPTER 89. SHADE TREE COMMISSION AND AMEND CHAPTER 266 TREES AND SHRUBBERY OF THE CODE OF THE BOROUGH OF EMERSON

☞ **Motion** to introduce Ordinance #1537-17 on first reading was **moved** by Councilman Lazar, **seconded** by Councilman Falotico and carried by a roll call vote of 4-1.

**RC: Council members:**

**YES: Falotico, Lazar, Knoller, Downing**

**NO: DiPaola**

XII. ADOPTION OF ORDINANCES

Mayor Lamatina announced that no ordinances were being adopted that evening.

XIII. REPORTS

- Mayor and Council

Councilwoman DiPaola commented on the moment of silence for former Tax Collector Joseph McQueeney who had served the Borough from 1976-1996. He was a great guy and had continued to help the town after retiring when the new Tax Collector was ill. She stated that he had been a hero for another Emersonian.

She had attended the Library Board of Trustees meeting and noted that a number of outdoor lights were out, reducing visibility. Mr. Hoffmann said they would follow up on this item. The library was displaying model airplanes from the Hackensack Valley Flyer Model Airplane Club. She thanked Library Director Camille Valentino for facilitating this display. In addition, an artist would be coming in to paint and repurpose tables so they would not need to purchase new ones. Their water bill had increased by 200% since the Memory Garden was installed and she said the water should be hooked in to the Department of Public Works or the Borough should reimburse the Library.

Councilman Falotico said he had attended his first Land Use Board meeting, the Reorganization meeting where new members were sworn in. Discussion had centered on redevelopment and the area designated as the Redevelopment Zone. He had attended a New Jersey State League of Municipalities orientation for newly elected officials on Saturday, January 7<sup>th</sup>.

Councilman Lazar gave the December report for the Department of Public Works. They were in the process of chipping Christmas trees and had recycled 14,200 pounds of metal. The department had been reimbursed \$1,440 for plowing County roads. The men's and women's restrooms at their facility had been updated. He noted that they were doing a fine job and keeping costs way down by doing a lot of the work themselves.

He stated that the owner of 23 Pavonia Avenue had brought flooding issues to his attention. He and DPW Superintendent Perry Solimando had investigated the area and used a camera to view the storm drain and found a collapsed clay pipe which was causing all the problems. They were working on ways to resolve this and were currently getting quotes. A discussion with the Borough Engineer was also planned. He wanted to make sure the property owners on Pavonia Avenue would not be subject to flooding.

Council President Knoller congratulated the new Police Officers Murphy and McDermott and said they were two fine young men. He had recently met in person with nine residents and two additional residents on the phone to listen to their concerns about redevelopment. He told them he would bring their concerns to the Council. He said that condemnation was a big concern and the Governing Body did not really want condemnation. It was not an easy process and he hoped the developer would be able to come to amicable agreements with all the property owners in the designated area. The group had agreed that the area needed to be redeveloped but had expressed concerns about the PILOT program. He said new information would be posted to the Borough website. There was discussion about a potential increase in the number of students that might enroll at the schools but at this point they did not see that happening. He said that if something changed, they would have a discussion with the school.

Council President Knoller also said the group had asked why the area was a condemnation redevelopment zone. Mr. Doyle explained that it had always been a condemnation zone. In 2004 and 2006 the area was studied by the Land Use Board as recommended by the Governing Body at that time. The study was to determine whether the area was in need of redevelopment. Once confirmed, the Governing Body automatically at that time under the law had the authority to acquire property. Since that time the Legislature sought fit to say that if you want to continue to be able to acquire property, you now needed to include that in your notice as well as the letters sent to everyone and what was published in the paper. He added that the Governing Body always had that authority going back to the first time they designated it as an area in need of redevelopment. When the notices were sent out again, they were sent as they were required to be sent presently. They did not have to say it before, but now they did.

Council President Knoller said another topic discussed was that the Governing Body needed to do a better job of communicating to the public. He said that overall, the discussion was cordial and enlightening. He appreciated that they asked him to be there and hoped to continue to have discussions with the public in a neutral setting where everyone had the ability to voice their opinion. There was a lot of respect and everyone listened to each other. They may not have agreed with his opinion but they were very respectful and he really appreciated that. He acknowledged some people's anger and frustration with what was going on but his intention was not to create that. He understood that when things were changing, some of the changes were happening so quickly that they could bring frustration and apprehension and uncertainty.

He stated he was only looking at Block 419 and hoped that the property owners across the street would take care of their properties on their own. He hoped it would never come to condemnation or eminent domain. He thought that property owners did have a responsibility to maintain their properties. He wanted to keep the Family Town atmosphere but also move Emerson forward. He noted that there was a COAH obligation that would enable some of the requirements to be addressed by this particular project. But the ultimate goal was to clean up and improve the downtown to attract people to come to Emerson to live and open businesses and have adequate parking and walkways.

He had attended the Chamber of Commerce meeting the previous week and they had asked about redevelopment. He said he had no intention of going beyond Block 419. That was not the focus and not what he was looking to do or what needed to be done. But moving forward on Block 419 was the right decision to provide some tax stabilization. He hoped agreements would be made amicably between the developer and the property owners and that it did not come down to a condemnation effort. He said that this process was not simple; rather it was long and drawn out and time consuming.

Mayor Lamatina said he shared Council President Knoller's thoughts on redevelopment and ceded his report time to allow Ms. Bogart to explain the interaction between the redevelopment zone and affordable housing.

Council President Knoller said that if the ordinance passed on second reading, the Historical Preservation Commission would become the Historic Preservation Committee and suggested that Ms. McGuire become one of the first residents to be asked to be on the committee. She had done a tremendous amount of work on her own time, including historic fact finding about Borough Hall and mentioned her Facebook page, Preserve Emerson Borough Hall, where she posted pictures of the WPA paintings in the basement.

Councilman Downing had attended the Fire Department Installation Dinner and was amazed to see generations of families who were committed to volunteering in town. It showed the dedication of Emerson's residents and was what the town was all about. He added that the new police officers were great guys and would also be a great addition to the town.

He also reported on the recent Environmental Commission meeting and said they were moving forward with the Centennial Park project and community garden. They were discussing walking paths and using grants to install porous rubber walkways that would be environmentally sound and sustainable as well as ADA accessible for wheelchairs as well as strollers. It would also include lighting and deer fencing for the vegetable gardens. He praised the volunteerism of the Environmental Commission.

He addressed condemnation and redevelopment and explained the reasons he voted the way he did. He did not believe the project was going to move forward and it was going to fall apart like all the other ones. He said they needed to move forward – they were focusing on one little area. He did not want to take anyone's property and wanted everyone to get what they deserved. If someone did not want to be involved in the project, then they should come out. He was not happy to hear that JMF wasn't being fair but he hoped the attorney would address that. He stated that if it was not being done fairly or properly, then maybe they should renegotiate with JMF and find a new developer because they were voiding their agreement with the Borough. He added that part of their agreement was to do fair market values. He said that all the buildings were in the condemnation zone since 2002. It was nothing new; people had bought property in the redevelopment zone. They were not looking at anything else; they were trying to do one piece of the town and try to make it better.

Mayor Lamatina stated that the Borough needed to make affordable housing a realistic and reasonable opportunity. He asked the Ms. Bogart to explain how affordable housing related to redevelopment. They had to provide a draft plan to the Court to address Emerson's affordable housing obligation and make it a reasonable opportunity for houses to built.

Ms. Bogart said they had recently promised the Court that they would come up with a draft plan in the next month or so trying to address the Borough's affordable housing obligation. Otherwise, the Borough would be subject to builders' remedy lawsuits. She said the Borough had been sued before for builders' remedy lawsuits. As a result of that lawsuit, the town had a 20% overlay for the whole municipality; any development over six units was required to include 20% set aside for affordable housing units. The Land Use Board would be obligated to review and consider it in accordance with that ordinance. That overlay made development more difficult in any parcel in the Borough, not only in the downtown area. It created an opportunity for developers to go in throughout the rest of the municipality and build multi-family or affordable housing where they may not want it in nice little family neighborhoods.

She said that as part of the draft plan, they were trying to get the overlay for the whole municipality lifted and concentrate the affordable housing where it should be, in the downtown area. The location would be near mass transit so that people who might not have access to a vehicle would be able to get to work. By having the Redevelopment Zone, the Borough was telling the Court that this was where they had planned for it for over 15 years. The good thing about the redevelopment statute was that the Borough would get a bonus for every rental unit provided for affordable housing, an additional unit credit. But in a redevelopment district, you would receive 1.33 credits for every unit. So any units provided downtown would receive additional credits up to 25% of Emerson's obligation. It was a benefit to the municipality because it would reduce our obligation.

Mayor Lamatina asked how Ms. Bogart's plan would be affected if the Governing Body decided to abolish the Redevelopment Zone. She said the plan would be affected significantly; bonus credits would be gone. If a Court accepted Emerson's plan and relied on it and then the redevelopment district was abolished, the Courts would say that Emerson did not abide by its plan and had not committed to the constitutional obligation to provide affordable housing.

Ms. Bogart said the prior round obligation was to provide 74 units. The Borough went through a vacant land adjustment so it was reduced previously and wound up with an overlay over the entire municipality. EConsult, the Borough's consultant hired to come up with the number, estimated the number to be about affordable 237 units, which was inclusive of the 74 units. This would mean the Borough would have to provide over 1000 units. Fair Share Housing has suggested the Borough would have to come up with 408 affordable units but said they would reduce their obligation by 30% if the Borough was willing to settle with them. That would represent about 290 units they would want to see built in Emerson. Mayor Lamatina said that was the quota - the Borough did not have to build them; they had to make it a reasonable possibility. The way to do that was to have enhanced or multi-family zoning. She noted that JMF's project would represent about 47 credits. Mr. Doyle said that would immediately reduce Emerson's obligation if the project could get accomplished.

Councilwoman DiPaola said that while they were talking about affordable housing, the Borough was also spending a lot of money to fight in the Courts to bring the number down. She asked how much had been spent on Borough Attorney fees to prepare Court documents to reduce the number. Mr. Hoffmann said he would research this and let her know. She noted they were discussing affordable housing they had to do yet they were spending a lot of tax dollars to go to Court.

Mr. Doyle said that it was not tax dollars, but COAH dollars. He explained that the Borough was allowed to use its COAH fund to defend COAH actions – the money collected from developers to build their COAH units could be used and did not go against the taxpayers. She asked how much money was in the account and whether that money was also to be used to build units. Mr. Doyle said it was for all the Borough's COAH obligations. He explained that one of the things they were allowed to do with that money was to defend these kinds of claims. Councilwoman DiPaola responded that they could also be building affordable housing somewhere with the money and asked if that wasn't what it was really for – the developer puts the money aside for the Borough to build it – but instead it was being spent on litigation. Mr. Doyle responded that currently Fair Share wanted to say that Emerson's obligation was 400 units. That would require 1600 units to be built in town if they just fell on the sword and not challenge it.

Mayor Lamatina asked if she was suggesting that it not be challenged. Councilwoman DiPaola said she thought it was ridiculous that anyone was going to make the town of Emerson build 1600 affordable units – there was no space for it and the Court was wrong. Mr. Doyle asked who would tell them that they were wrong. Councilwoman DiPaola said that apparently the Borough would have to tell them they were wrong but the municipality was spending a lot of money to do it. She said she was just bringing out the point that as much as this number is being discussed, the Borough was trying to get it lowered. So maybe there was not so much need for redevelopment.

Mr. Doyle said the experts said the number was 237; that was a little less than half of what they say. But if the town did nothing and did not challenge it, then the Borough would have to account for 1600 units in town. He said a developer would come in and put property together or find other property and the Court would potentially allow them to build. He said that you could see it in Franklin Lakes and Park Ridge.

Councilwoman DiPaola said she did not think it could happen in Emerson – the roads were not wide enough to accommodate the kind of buildings that they were being scared into thinking they were going to come in and build. She said experts were wrong and there was probably another expert who would negate that. Mr. Doyle said the only way to prove the experts wrong was by retaining competent counsel, a good planner, and experts like EConsult to say there was no way Emerson could build 400 units. He added that the alternative was to simply not defend it. The Court would say no one had challenged it and the town would have to build 1600 units and provide an overlay zone to get to 1600 units.

Ms. Bogart said they were not just trying to reduce the number because they knew the experts had said 237; what they were really trying to do was say if you say it is 237, this is where it was going to be zoned and planned for as opposed to a developer coming in and saying they would do 400 units for the Borough. If Emerson just sat back and said 400, then the developer would be permitted to come in and take any property in town and build affordable housing.

Councilman Downing said he thought they were trying to be proactive by attempting to show the Courts that Emerson was willing to try to do this and move forward and not stick their heads in the sand and think it would never happen and then get 400 units shoved down their throats wherever there was open space. If Emerson steered its own destiny, it was better than having someone else drive the bus. The Land Use Board and Council might not have control over what would be built because Fair Share Housing may say a developer could put 400 units somewhere.

Councilwoman DiPaola said she understood why Councilman Downing believed it but she did not believe it and did not think being proactive was putting businesses and landowners in a condemnation zone. Councilwoman Downing said towns were going through this all over. Councilwoman DiPaola said a lot of professionals were making a lot of money off of it – a lot of professionals were making a lot of money off of it.

- Borough Administrator Robert Hoffmann said that due to the late hour he was holding his report to the next meeting.
- Borough Clerk Jane Dietsche had no report.
- Special Counsel Douglas Doyle said there was a letter prepared by Mr. DeAngelis and he recommended that the Governing Body authorize him to prepare a response. Mr. Hoffmann said that discussion would take place during Closed Session.

☞ **Motion** to extend the curfew to 11:15 p.m. was **moved** by Councilwoman DiPaola, **seconded** by Councilman Downing and carried at 10:55 p.m.

#### XIV. PUBLIC COMMENT

☞ **Motion** to open the meeting to comments from the public was **moved** by Councilwoman DiPaola, **seconded** by Councilman Downing and carried at 10:55 p.m.

Bill Wassmann, Historic Preservation Commission Chairman, 27 Sullivan Drive said it was the Governing Body's fault that the commission did not do anything because they had no legal authority. He said that an historic element needed to be included in the Master Plan.

Jill McGuire, 154 Linwood Avenue read a report on the history of Borough Hall and said the murals met the criteria for historic designation.

☞ **Motion** to extend the curfew to 11:45 p.m. was **moved** by Councilwoman DiPaola, **seconded** by Councilman Downing and carried.

Todd Bradbury, 28 Chestnut Street asked about the status of the letter he received in 2008 stating he was out of the Redevelopment Zone. Mr. Doyle confirmed that he was not currently in the zone. Mr. Bradbury said that eminent domain would have a massive impact on Emerson and asked that it not carry from the Oradell to the Westwood borders.

Ed Bueti, 91 Chestnut Street inquired about the difference between a Historic Preservation Commission and Historic Preservation Committee and asked how condemnation would affect tenants or business owners. He also thanked Council President Knoller for participating in the meeting with residents and Councilman Lazar for his work to resolve flooding issues on Pavonia Avenue.

Corey Melillo, 18 Vivian Avenue asked questions about affordable housing.

Robert Petrow, 21, 23, 33, 50 Chestnut Street asked if his properties were included in the Redevelopment Zone. Mr. Doyle said his properties were in an area that was going to be studied; he was not in - he had been identified as in an area that was potentially going to be in, he had received a notice; he could disregard the notice until he received further notice from the Borough. In addition, they were taking a harder, closer look preliminarily at some specific properties to figure out if they should be immediately recommended to the Land Use Board to no longer be considered. For example, those who had made improvements to their property by complying with the CBD redevelopment plan. He said that Mr. Petrow might be off the hook, to use his words, sooner rather than later. If it was determined that his properties should still be in the area, he would get a new notice in the paper and the opportunity to appear at a hearing before the Land Use Board with his planner, with a lawyer to challenge whether in fact he should be in the area.

Mr. Doyle concluded by saying that Mr. Petrow was not in but he was right now going to potentially be considered to be designated as in an area in need of redevelopment. Mr. Petrow said he had sent a letter to Borough Hall and wanted to know if he would receive a response. Mr. Doyle said that they were going to see if there was a way, with respect to certain properties, whether the Planner could recommend that they streamline some of the properties which clearly did not need to be considered anymore. He said that they were going to take a look at everyone's property but because Mr. Petrow asked for it, they would make sure they took a look at his.

Rich Palumbo, owner of Plaza Auto Repair, 9 Emerson Plaza East said he had concerns about the letter he received stating his property was in the Redevelopment Condemnation Zone. He was disgusted by what he heard from Cork and Keg about being blown off. Mayor Lamatina said he had only heard one side and there was another side to the story. Mr. Palumbo stated he thought the Mayor and Council cared about property owners and would do the right thing. It needed to be handled properly by the developer. If the property owners did not want to sell, maybe the deal needed to be sweetened. Mayor Lamatina said they were all looking to sell, except according to Mr. DeAngelis, Ranchero Cantina – and that could change the next day. Mr. Palumbo said there would be moving, relocation fees that should be taken care of and it was up to the Governing Body to oversee things and make sure that happened.

Jim Sabino, 23 Pavonia Avenue said he had received a detailed report and thanked Councilman Lazar for investigating the flooding issues at his property. He asked about a timeline for repairs and inquired about recourse for the expenses he incurred from property damage. Mr. Doyle said he should check with his homeowner's insurance policy. Mr. Sabino said he hoped this would be resolved sooner rather than later. Councilman Lazar said they would move along with the repairs but by law they had to get estimates before they could perform the repairs.

☛ **Motion** to extend the curfew to 12:00 midnight was **moved** by Council President Knoller, **seconded** by Councilwoman DiPaola and carried.

Bill Price, 9 Pine Emwood Drive thanked Councilman Lazar for helping to resolve the flooding issues on Pavonia Avenue. He said he was disappointed with the vote on redevelopment and thought the town was too small for this.

Todd Bradbury, 28 Chestnut Street asked that his property not be studied.

Seeing no more hands, Mayor Lamatina 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 Councilman Lazar, **seconded** by Councilwoman DiPaola and carried at 11:48 p.m.

XV. RESOLUTIONS ON CONSENT AGENDA NO. 59-17

☞ **Motion** to approve Consent Agenda No. 59-17 was **moved** by Council President Knoller, **seconded** by Councilman Falotico and carried by a roll call vote of 5-0.

**RC: Council members:**

**YES: DiPaola, Falotico, Lazar, Knoller, Downing**

- CA 60-17 Authorize the Borough of Emerson to Enter Into an Agreement for Architectural Services with Axis Architectural Services for a ~~Five~~ Three Year Period
- CA 61-17 Tax Refunds/Appeals
- CA 62-17 Approval to submit a grant application and execute a grant contract with the New Jersey Department of Transportation for the Main Street - Linwood Avenue Road Resurfacing Phase IV
- CA 63-17 Tax Lien Redemption – 50 Palisade Avenue
- CA 64-17 Authorize extension of Tree Service contract for CY 2017
- CA 65-17 Authorize extension of Cleaning Contract for CY 2017
- CA 66-17 Authorize Hiring of DPW employee on a full time temporary basis for three months to cover military service leave
- CA 67-17 Amending 2017 Council Liaison Appointments due to conflicts
- CA 68-17 Formation of the Redevelopment Subcommittee: Mayor Lamatina, Councilman Falotico and Councilman Lazar

☞ **Motion** to extend the curfew to no later than 12:15 a.m. as the last extension was **moved** by Council President Knoller, **seconded** by Councilman Falotico and carried at 11:58 p.m.

XVI. CLOSED EXECUTIVE SESSION - Resolution No. 69-17

☞ **Motion** to go into an executive session to discuss matters exempt from the public as duly noticed by Resolution No. 69-17 was **moved** by Councilwoman DiPaola, **seconded** by Councilman Downing and carried by a roll call vote of 5-0.

**RC: Council members:**

**YES: DiPaola, Falotico, Lazar, Knoller, Downing**

- #17-01/17-01 Real Estate – Potential Litigation N.J.S.A. 10:4-5
- #17-01/17-02 Potential Litigation - Redevelopment N.J.S.A. 10:4-7

XVII. RECONVENE

The Borough of Emerson reserves the right to return to Open Session and, if appropriate, take formal action.

☞ **Motion** to reconvene was **moved** by Councilwoman DiPaola, **seconded** by Council President Knoller and carried at 12:13 a.m.

☞ **Motion** to authorize Special Counsel Doug Doyle to respond to the December 29<sup>th</sup> letter from Richard DeAngelis, Esq. was **moved** by Councilman Falotico, **seconded** by Council President Knoller and carried by a roll call vote of 5-0.

**RC: Council members:**

**YES: DiPaola, Falotico, Lazar, Knoller, Downing**

☛ **Motion** to authorize Special Counsel Doug Doyle to undertake the discussions with Borough Planner Brigette Bogart and have Ms. Bogart prepare a report as was discussed in Closed Session for the next regularly scheduled meeting of the Governing Body was **moved** by Councilman Falotico, **seconded** by Council President Knoller and carried by a roll call vote of 4-0.

**RC: Council members:**

**YES: Falotico, Lazar, Knoller, Downing**

**ABSTAIN: DiPaola**

XVIII. ADJOURNMENT

With no other business to address, at the request of Mayor Lamatina, a motion to adjourn was **moved** by Council President Knoller, **seconded** by Councilman Downing and carried at 12:15 a.m.

Respectfully submitted,

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Jane Dietsche, RMC  
Borough Clerk