



MINUTES
BOROUGH OF EMERSON
MAYOR AND COUNCIL
December 17, 2019
7:30 P.M.
Borough Hall-Council Chambers
Emerson, NJ 07630



I. CALL TO ORDER

Mayor DiPaola welcomed everyone to the December 17th, 2019 Regular Meeting of the Emerson Governing Body. She read the Sunshine Statement announcing that the meeting of December 17th, 2019 had been adequately noticed and was in compliance with the provisions of the Open Public Meetings Law. Further, the meeting notice was transmitted to the Record and Ridgewood News on December 20th, 2018, posted on the bulletin board in the Borough Hall, Municipal Place, Emerson, NJ 07630 and 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.

II. ROLL CALL

PRESENT: Mayor DiPaola, Council President Falotico, Councilman Bayley, Councilman Gordon, Councilman Hoffman, Councilman Knoller, Councilwoman McGuire

Also present were Borough Administrator Robert Hermansen, Councilwoman-elect Nicole Argenzia, Borough Attorney John McCann, and Borough Clerk Jane Dietsche.

III. EXCUSED ABSENCE OF GOVERNING BODY MEMBER

- Councilwoman McGuire for her absence from the Regular Meeting of December 3, 2019

☞ **Motion** to excuse Councilwoman McGuire for her absence from the Regular Meeting of December 3, 2019 was **moved** by Councilman Hoffman, **seconded** by Councilman Knoller and carried unanimously.

IV. PROCLAMATIONS & CITATIONS

Mayor DiPaola said there were no proclamations or citations.

V. APPOINTMENTS/RESIGNATIONS

- Resignation of Tom Monahan as Fire Official effective December 31, 2019

☞ **Motion** to accept the resignation of Fire Official Tom Monahan effective December 31, 2019 was **moved** by Councilman Hoffman, **seconded** by Councilman Gordon and carried unanimously.

VI. MINUTES FOR APPROVAL

- Special and Closed Session Meeting Minutes of Tuesday, November 26, 2019

☞ **Motion** to approve the Special and Closed Session Meeting Minutes of November 26, 2019 was **moved** by Council President Falotico, **seconded** by Councilman Knoller and carried unanimously.

- Regular and Closed Session Meeting Minutes of December 3, 2019

☞ **Motion** to approve the Regular and Closed Session Meeting Minutes of December 3, 2019 was **moved** by Council President Falotico, **seconded** by Councilman Gordon and carried unanimously.

VII. CORRESPONDENCE

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

- Letter dated November 21, 2019 from Diane Gutierrez-Scaccetti, Commissioner NJDOT awarding Fiscal Year 2020 Municipal Aid Program for Ackerman Avenue – Phase II Project in the amount of \$215,000
- Letter dated November 2019 from Bergen County Executive James J. Tedesco III; Re: Bergen County’s Winter Wonderland at Van Saun County Park
- Resolutions from the Borough of Hasbrouck Heights, Borough of Paramus, Borough of Waldwick, and Borough of Hawthorne; Re: Resolution Calling for Study Commission to Review the Open Public Records Act
- Email dated November 8, 2019 from New Jersey Infrastructure Bank; Re: Meeting to update municipalities on the State’s Transportation Bank Financing Program
- Resolution dated November 6, 2019 from the Borough of Hawthorne; Re: Support of Senate and Assembly bills that would require public school be closed on the days of primary and regular elections
- Resolution dated November 6, 2019 from the Borough of Hawthorne; Re: Support of Assembly Bill to increase wages of poll workers to be paid by the State and the County in which the election is being held
- Letter dated December 7, 2019 from Francesca Ianora; Re: Thanking Mayor DiPaola for the proclamation.
- Email dated December 12, 2019 from Bill Panza; Re: Thanking Mayor DiPaola for the proclamation.
- Letter dated December 12, 2019 from Bergen County Utilities Authority; Re: BCUA’s 2020 proposed rates and public hearing notice.
- Letter dated December 10, 2019 from NJDOT; Re: Denial of Municipal Aid grand for improvements to Pascack Avenue Project.

VIII. FINANCIAL BUSINESS

- Resolution No. 290-19 Bill List

☞ **Motion** to approve Resolution No. 290-10 Bill List was **moved** by Councilman Knoller, **seconded** by Councilman Gordon and carried by a roll call vote of 6-0:

RC: Council members:

YES: Bayley, Hoffman, McGuire, Falotico, Knoller, Gordon

IX. UNFINISHED BUSINESS

- Discussion of authorizing agreement with Cross River Fiber about fiber optic installations on utility poles – Mr. Hermansen said this item was on the Consent Agenda for approval. It had been reviewed and approved by Mr. McCann. Mayor DiPaola said the installation of fiber optic equipment would make the Borough more attractive to businesses at no cost to taxpayers.
- Open Space grant 2020 applications now open – Mr. Hermansen said he was looking for projects to apply for and asked for feedback from the Governing Body. He would let everyone know the deadline.
- Safe Pedestrian Routes – Councilwoman McGuire provided an update on this initiative and said she had recently met with Chief Mazzeo. The crosswalks at Municipal Place and Locust Avenue were being restriped to enhance pedestrian safety. She also requested a review of the Kinderkamack Road/Locust Avenue intersection. In addition, the Police Department requested an engineering review of Palisade Avenue and First Street to consider installation of a crosswalk with the goal of keeping students safe.
- Discussion of per diem HHS Building Sub-code Official – Mr. Hermansen said Construction Official Rich Silvia was in the process of obtaining HHS certification which would be effective April 1st, 2020. Until that time, there was a need for to hire someone on a per diem basis to sign off on plans although Mr. Silvia could do all the inspections. He anticipated that there would be three or four instances where the Borough would need someone to sign off on these plans. He asked that this item be placed on the next agenda.

X. NEW BUSINESS

- Amendments to Tree Management ordinance, Chapter 266, Article II – Councilman Hoffman said this topic was discussed during a meeting of the Shade Tree Commission. A number of items needed to be addressed next year, but he referenced two in particular. There was a need to address the deadline for tree replacement fees when developers appeared before the Land Use Board. The Shade Tree Commission requested that the fees be paid before a Certificate of Occupancy was issued. The second item was related to the Starbucks application. If a commercial development contained ten or more off street parking spaces, there should be one tree planted for every two spaces abutting the perimeter of the parking lot. If the trees could not be planted, the developer would have to submit a certain payment per tree. He said he would have a draft of all the recommended changes prepared for the second January meeting.

XI. INTRODUCTION OF ORDINANCES

Mayor DiPaola announced that no ordinances were being introduced.

XII. ADOPTION OF ORDINANCES

Second Reading and Public Hearing:

1603-19 AN ORDINANCE TO AMEND CHAPTER 132 UNIFORM CONSTRUCTION CODES, SECTION 3 'FEES'

☞ **Motion** to open the meeting to comments from the public on this ordinance only was **moved** by Council President Falotico, **seconded** by Councilman Knoller and carried unanimously.

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

☞ **Motion** to close the meeting to comments from the public on this ordinance only was **moved** by Council President Falotico, **seconded** by Councilman Knoller and carried unanimously.

☞ **Motion** to adopt Ordinance 1603-19 on second reading was **moved** by Council President Falotico, **seconded** by Councilman Gordon and carried by a roll call vote of 5-0 with one abstention:

RC: Council members:

YES: Bayley, Hoffman, Falotico, Knoller, Gordon

ABSTAIN: McGuire

XIII. REPORTS

- Mayor and Council

Councilman Bayley said the Fire Department had been very busy; they had participated in the Christmas Tree Lighting Ceremony and Santa had travelled through the Borough for three nights. They were looking forward to replacing the flooring at the firehouse in the spring and emphasized live Christmas tree safety. The Joint Insurance Fund did not have a meeting in December. The Personnel Committee had not met recently.

Councilman Hoffman said the last meeting of the Environmental Commission had taken place in November. They had discussed upcoming programs for 2020 including the Community Garden and Earth Week events scheduled for April. The Shade Tree Commission would be taking over the Arbor Day events and would be proceeding with spring tree planting.

Councilwoman McGuire wished everyone a Happy Holiday, Merry Christmas, Happy Hanukah and a Happy and Healthy New Year.

Council President Falotico said he had been unable to attend the Library Board of Trustee meeting due to a work conflict. The security cameras had been fixed and were now operating. He thanked IT Consultant Doug Neumetzger for his perseverance in resolving this issue. At the Ambulance Corps meeting the previous evening, they had chosen to table the election of their officers until January. Their installation dinner would take place on January 31st due to an issue with nominations. He added that they were in need of volunteers and gave their November monthly report. He noted that their temporary building had been delivered and asked for a construction update. Mr. Hermansen said that it was scheduled to be completed by the end of the year. Council President Falotico said he hoped that the Borough would move forward with the vaping ordinance and limit the sale and possession to individuals over the age of 21 and limit it at places like parks and sporting events.

Councilman Knoller had attended the Board of Health meeting and said they would like the vaping ordinance to address hookah lounges as well. They did not want to wait for the state to act. Mr. McCann said that the issues were complex and constitutional and there was no simple fix, while noting that they all shared the desire to do something. Councilman Knoller said the Board of Health would write a resolution for the Governing Body to pass and send to the state.

Councilman Gordon gave the monthly report of the Department of Public Works and noted that they had decorated Borough Hall and other areas for the holidays. The staff had taken safety training classes including Best Practices in Snow Emergencies and Making Safety Work. They had lined the new commuter parking lot at 58 Locust Avenue, had new signs made and had sited and scheduled an appointment with PSE&G to re-site street lighting to ensure the parking lot was well lit. They had taken delivery of the new ambulance building and footings were being installed. He wished everyone a nice holiday and a prosperous New Year.

- Borough Administrator Robert Hermansen reported on the following:
 - He wished everyone a Happy Holiday, a Merry Christmas, a Happy Hanukah and a Happy and Healthy New Year.
 - He would update the Governing Body on the SRO agreement during Closed Session.
 - The property at 175 Forest Avenue, formerly known as the Town and Country property, was officially owned by the Borough. An appraisal would be performed. The Borough Engineer would inspect the property for wetlands to determine the number of lots and report back. When the Borough received the report, they planned to put the properties out to bid for sale.
 - The Department of Public Works wanted to remind everyone that garden debris would be picked up through the last Monday in December.
 - The Locust Avenue commuter lot was working out well. They had received compliments on how well it had worked out and thanked the Department of Public Works for their work on it.
 - He had attended the senior meeting; they were thankful for everything going on.
 - The Labor Attorney was in the process of preparing an ordinance related to requiring driver license review for Borough employees and volunteers to protect and indemnify the Borough.

- Borough Clerk Jane Dietsche thanked Deputy Clerk Coleen Goddel for taking on the role and responsibilities of Acting Borough Clerk in her absence.
- Borough Attorney John McCann thanked the Mayor and Council for working with him to resolve issues and congratulated them on working in a bipartisan manner. He thanked Mr. Hermansen and said that having a full time Borough Administrator was having a positive impact and thanked him for his energy and dedication. He had received correspondence from Land Use Board Attorney Chris Martin related to the Borough's Affordable Housing obligation cautioning them on the requirements and terms of the settlement agreement - this would impact the redevelopment project. He said there was concern about seven off site requirements which might not be in compliance. He stated that the Affordable Housing Agreement with the Court was essential to the Borough and the redevelopment project.
- Mayor DiPaola commended Mr. Hermansen and said she was able to spend less time at Borough Hall. She appreciated that he was doing a good job and moving things along. She had missed the recent Senor Meeting due to illness but was able to attend their holiday party. She thanked them for the invitation and said she had a good time. She noted that this was the second to last meeting for Council President Falotico and Councilman Knoller and urged them to return for the Sine Die meeting. They would have the opportunity to receive a plaque and say a few words after their tenure on the Council. She said the Governing Body would consist of five Councilmembers and the Mayor and asked that the Democratic Committee provide the names of the nominees as quickly as possibly for continuity. She wished everyone a Merry Christmas, Happy Hanukah, and a Happy New Year and noted that the Borough had experienced the loss of a lot of longtime residents during the year. She said that since the Shade Tree Commission had taken over the Arbor Day Ceremony, residents could submit the name of a loved one to the Commission or the Borough Clerk so that they could be included in the remembrance during the event.

Councilman Hoffman thanked Councilman Knoller for his eight years of service and his work on the Finance Committee. He had been able to provide a lot of valuable insight on the budget process.

Mayor DiPaola said everyone to be vigilant during the holiday season and to keep any eye on their surroundings. She said that Emerson grieved for Jersey City Detective Joseph Seals.

XIV. PUBLIC COMMENT

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

Richard DeAngelis, Esq., McKirdy, Riskin, Olsen and DellaPelle said he was representing Dominic Scala and Cork and Keg in his ongoing efforts with the redeveloper. He was pleased with the back and forth but opined that it looked like they were on a collision course and discussed the potential lease condemnation and possible actions. He said that he felt very strongly that if they were faced with a condemnation action, they would oppose it and said they were on strong legal ground. He opined that the Governing Body had inherited a flawed redevelopment process and said he would pursue his client's rights and protect his property interests. He noted that Mr. Scala had nowhere to go.

Laura Litchult, Cradles to Crayons, 300 Kinderkamack Road said that rumor had it that members of the Governing Body feared that if they opposed the condemnation of the lease they would be personally sued by the developer. She opined that the developer needed to work with Mr. Scala on a solution.

Richard DeAngelis, Esq. commented on the landlord/tenant issues and said the wanted the Governing Body to be aware that they were not the last man standing. His understanding was that there was another tenant on the block whose eviction had gone to court and was on appeal and commented on how long that process could take. A week prior to the formal request from the redeveloper to condemn the lease coming to them, they had been in touch and said that an opportunity to purchase had come forward but they needed a few more weeks. He opined that this was how they had been forced to negotiate. He opined that the last administration had screwed this up and that the process was flawed. He said he did not want to be in court but if they had to, they would.

Dan O'Brien, 38 Palisade Avenue said when the Stop and Shop shopping center was being developed, the tenants were allowed to stay until their leases expired. He also asked how the municipality gave away public property for zero dollars.

Seeing no more hands, Mayor DiPaola 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 Falotico, **seconded** by Councilman Knoller and carried unanimously.

XV. RESOLUTIONS ON CONSENT AGENDA NO. 291-19

☛ **Motion** to approve Consent Agenda Resolution No. 291-19 was **moved** by Council President Falotico, **seconded** by Councilman Gordon and carried by a roll call vote of 6-0:

RC: Council members:

YES: Bayley, Hoffman, McGuire, Falotico, Knoller, Gordon

- CA 292-19 Authorize Drug & Alcohol Testing Agreement For CY 2020
- CA 293-19 Authorize Renewal of Tyco Animal Control Contract for 2020 in the amount of \$9,900
- CA 294-19 Mayor and Council Regular Meeting Dates for 2020
- CA 295-19 Mayor and Council Holiday Dates for 2020
- CA 296-19 Municipal Endorsing Resolution for FY20 Bergen County Community Development Block Grant Project in the amount of totaling approximately \$165,927.75 for improvements to Thomas Avenue
- CA 297-19 Cancel Taxes on 175 Forest Avenue
- CA 298-19 Transfer of funds
- CA 299-19 Cancelling Current Fund Unexpended Appropriation
- CA 300-19 Cancellation of Miscellaneous Reserve (Deficit) Balances – Other Trust Fund
- CA 301-19 Change Order #3 Vivian Avenue and Pershing Street Drainage Improvements
- CA 302-19 Award 2020 Tree Services Contract to Ace Tree Surgeons in an amount not to Exceed \$53,000

- CA 303-19 Appoint Nicholas Mazzeo as Part Time Police Dispatcher effective November 1, 2019
- CA 304-19 Appoint Guetano Belfert as Part Time Police Dispatcher effective November 1, 2019
- CA 305-19 Approval of Right-of-Way Use to Cross River Fiber, LLC
- CA 306-19 Approve A One Year Extension With New Jersey Technical Services, Inc. For Elevator Sub Code Inspections Per Contract Approved by the Mayor & Council Via Resolution #155-18 Dated May 15, 2018 for Calendar Year 2020

XVI. CLOSED EXECUTIVE SESSION - Resolution No. 307-19

☞ **Motion** to go into an executive session to discuss matters exempt from the public as duly noticed by Resolution No. 307-19 was **moved** by Councilwoman McGuire, **seconded** by Councilman Knoller and carried by a roll call vote of 6-0:

RC: Council members:

YES: Bayley, Hoffman, McGuire, Falotico, Knoller, Gordon

- #19-12/17-49 Potential Litigation – Redevelopment Update N.J.S.A. 10-4-7
- #19-12/17-50 Potential Litigation – Lease Condemnation - N.J.S.A. 10-4-7
Block 419, Lot 6.01
- #19-12/17-51 Contract Negotiations – SRO 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 Councilman Knoller, **seconded** by Council President Falotico and carried unanimously.

☞ **Motion** to approve Resolution No. 308-19 to authorize the Borough Attorney to proceed pursuant to the November 11, 2019 request from the redeveloper to proceed with the enforcement of the Redevelopment Agreement and as part of this resolution, the parties have agreed by report to participation in working together to assist the Cork and Keg to find a new location in the Borough of Emerson by January 2, 2020 and that Borough of Emerson requests that the Borough Attorney forbear at his discretion any action until the next regular council meeting to be held on January 2, 2020 was **moved** by Councilman Hoffman, **seconded** by Councilman Knoller and carried by a roll call vote of 6-0:

RC: Council members:

YES: Bayley, Hoffman, McGuire, Falotico, Knoller, Gordon

Mr. McCann said that late that afternoon the Borough Administrator, on his own initiative, had contacted both parties, Mr. DeAngelis and the redeveloper's attorneys. He noted that most of the Borough's elected officials did not want to be in this position and no one relished it. The parties' primary concern was the relocation of Cork and Keg. On Mr. Hermansen's initiative, they agreed to immediately work together to immediately being to help Cork and Keg relocate. He said this would be wonderful for both the Cork and Keg and the Borough. But the Borough did have a responsibility to respond to the request by the redeveloper who had sent a letter more than a month ago requesting that the Borough take immediate action. To keep the Borough acting in good faith in regard to the Redevelopment Agreement, the Borough had authorized the Borough Attorney to proceed pursuant to the redeveloper's request. However, they asked that the not take any steps, forbear any action, such as notices going out, to take those next legal steps until the parties had a chance to work together over the next couple weeks with the relocation process. He said he would be glad to do so. They left it to the discretion of the Borough Attorney when that action would proceed in the future – when the notices would go out and so forth.

He was glad the parties involved have had some modicum of an agreement to participate and work together because up to this point, the Cork and Keg and developer had failed to have a meeting of the minds. Mr. DeAngelis eloquently put his client's position on the record that evening. He said that respectfully that was a position, arguments, not dispositive and obviously the Borough Attorney and the Borough's redevelopment attorney and other attorney who were consulted in this matter disagreed. At the end of the day, there was going to be a third party that may have to decide this. The Borough Administrator recommended that the parties, instead of the redeveloper or the Cork and Keg paying hundreds of thousands of dollars in legal fees and putting the Borough and taxpayers at risk, participate in binding arbitration. He said it was a short circuit process and a third-party process that he hoped the parties embraced. He was very pleased the parties were going to work together and he as going to monitor and the Administrator was going the help the parties in the relocation process to commence immediately. The Council vote that evening definitely signaled to all parties involved that the Borough will meet its obligations pursuant to the law and will abide by them. All acted that evening for a lot of them in contraindication to their personal views about condemnation and the process that was put in their laps.

He noted that the Mayor and Council had too much class that attorneys did not have to have sometimes. He was frankly appalled by the prior mayors' actions of what happened last year. The town was signaled that they did not want this project and for some reason, after the election, multiple meetings were held as late as December 31st to put the noose around this Mayor and Council's neck going forward. There was no problem when people disagreed in how to proceed with what a Borough looked like. The Mayor and Council who viewed that the development would be positive thing for the Borough was entitled to that and entitled to proceed. They were elected officials and had a vision. People could disagree about that vision as then Councilwoman DiPaola had disagreed. That did not make them bad or evil people. It was a disagreement.

Mayor DiPaola said the problem came when the people of Emerson spoke and the former GB did not listen and chained them to this agreement and for that she was sorry. But for legal reasons as they had been told, they had to abide by the contract.

Mr. McCann said there was nothing wrong with disagreeing about the vision of the town, that is why you had elections. He added that after the election, a strong message was sent. And in that regard, the former mayor he did not understand. To this day the former mayor posts on Facebook what a wonderful thing this was. He was entitled to his views but he wanted to say directly to this Mayor and Council and to those who supported or did not support the development that you had to act responsibly and you had to act pursuant to the law and the obligation to all the taxpayers in the community. And if the Borough was to engage in a flat-out breach of contract with the redeveloper, that would expose the Borough's taxpayers to a potential \$400 increase per home after fee shifting, after blatant disregard of the legal binding contract. He said that Mr. DeAngelis raised the point that he also had a fee shifting element because in his view and expertise, it was the taking of property. Whether or not he was correct was for a third party to decide. So that also was a potential risk.

At the end of the day, the Council was faced with the obligation of protecting the certain potential, in his view and opinion, of breach of contract action by the redeveloper – it would be an irresponsible vote in this case. He congratulated them – he knew it was not easy, it was difficult and he had faced these very issues as a councilman himself. But they had to do what in their view was their legal obligation. He said they should remember when they stood up and got sworn in, that they had taken an oath to uphold the Constitution and laws of State of NJ. They had to do it in the best way they knew how.

As to the Cork and Keg, he had sat in on meetings with him trying to get this resolved with their prior attorney, had visited his store and taken pictures, and understood Mr. Scala's position and it was unfortunate and he regretted it. But the blame had been articulated where it sat and belonged. It was not with the current Mayor and Council but with the prior administration if there was blame to be around.

Mr. McCann closed by stating that it was not an easy night for anyone and he hoped and prayed that Mr. DeAngelis and the attorneys for the redeveloper worked in good faith with each other and take care of their clients; that was their job. His job was to take care of the taxpayers and provide the best advise possible to the Mayor and Council.

XVIII. ADJOURNMENT

With no other business to address, at the request of Mayor DiPaola, a motion to adjourn was **moved** by Councilman Hoffman, **seconded** by Councilman Gordon and carried at 10:12 p.m.

Respectfully submitted,

Jane Dietsche, RMC
Borough Clerk