



MINUTES  
BOROUGH OF EMERSON  
MAYOR AND COUNCIL  
May 15, 2018  
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.

II. ROLL CALL

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

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

Also present were Borough Administrator Robert Hoffmann, Borough Attorney Wendy Rubinstein, Borough Planner Brigitte Bogart and Borough Clerk Jane Dietsche.

III. EXCUSED ABSENCE OF GOVERNING BODY MEMBER

- Councilman Downing for his absence from the Regular Meeting of May 1, 2018

☞ **Motion** to excuse Councilman Downing for his absence from the Regular Meeting of May 1, 2018 was **moved** by Council President Knoller, **seconded** by Councilman Falotico and carried unanimously.

Mayor Lamatina asked for a motion to amend the order of business on the agenda to move up two items on 'Unfinished Business'. The first item was "Discussion of the Historic Element and Draft Language of the Master Plan" and the second was "Historic Designation – Proper Procedures" so that Borough Planner Brigitte Bogart would be able to leave to attend a meeting in another municipality.

☞ **Motion** to amend the order of business on the agenda to move up two items on 'Unfinished Business': "Historic Element and Draft Language of Master Plan" and "Historic Designation – Proper Procedure" was **moved** by Council President Knoller, **seconded** by Councilman Falotico and carried by a roll call vote of 6-0.

**RC: Council members:**

**YES: DiPaola, Bayley, Wolf, Knoller, Falotico, Downing**

- Discussion of Historic Element and draft language of Master Plan - Borough Planner – Mayor Lamatina said the Governing Body had recommended to the Land Use Board that an historic element be included as part of the reexamination of the Master Plan. Ms. Bogart discussed the steps necessary to achieve this goal. She explained what currently existed in the Borough related to historic preservation, what the Master Plan recommended and what State law required a municipality to do. She stated that the Borough currently had regulations related to historic preservation under Chapter 163 which were based on the general national guidelines but did not go into detail.

State Statute required that in order to have an historic preservation element, current sites would need to be examined to see if they were historically significant. Criteria would be based on whether a special person lived there, a special event occurred at that location or architecture associated with the building was significant to a particular era. Once that determination was made for each site, an inventory of every single property within the municipality would need to be performed. The final phase of the historic element was to come to conclusions and identify standards - architectural guidelines, site guidelines or just identifying the building itself.

By state law, the Historic Element was a land use law or planning board document. Emerson's Land Use Board would identify properties and set criteria; however, the Historic Preservation Committee could consult and contribute to the process. Ms. Bogart explained that her role would be to create the element but work with the Land Use Board because it was their document. The board could create a committee with the Historic Preservation Committee and work with them to look at what the standards should be, what they were looking to assess and then looking to identify sites. They would create a document and go before the Land Use Board for a public hearing and then adopt the document. It would then go through the ordinance process before the Governing Body. She said it involved a lot of research and was a difficult process which would take at least a year but the final result was a very important document.

Ms. Bogart departed the Council Chambers at 7:50 p.m.

- Historic Designation - Proper procedures – Mr. Hoffmann discussed the Certification of Eligibility of Borough Hall and recognized the laudable efforts of a private citizen in pursuing this goal. He noted that based on his review, there were flaws in the draft document such as factual errors, misuse of words and repetitive quotes. He wanted to ensure that the Borough of Emerson was represented professionally and accurately to the State and the document prepared by the State employee did not do that. The Governing Body held an extended discussion regarding whether the document should be edited for accuracy and resubmitted and who would be responsible for this task.

☞ **Motion** to open the meeting to comments from the public on this topic only was **moved** by Councilman Downing, **seconded** by Councilman Falotico and carried and carried by a roll call vote of 6-0 at 8:03 p.m.

**RC: Council members:**

**YES: DiPaola, Bayley, Wolf, Knoller, Falotico, Downing**

Jill McGuire, 154 Linwood Avenue said this was an internal document assembled from a pool of information she and others provided to Andrea Tingey of the State Office of Historic Preservation and allowed the application to move forward with nomination for historic status; it was not meant to be a public document. She opined that she did not see a need for it to be corrected.

Robert Obernauer, 101 Linwood Avenue opined that he did not support the designation of the building and requested that corrections be made to the document and have it resubmitted to the State.

☞ **Motion** to close the meeting to comments from the public on this topic only was **moved** by Councilman Falotico, **seconded** by Council President Knoller and carried unanimously at 8:03 p.m.

☞ **Motion** to have Mr. Hoffmann and Ms. McGuire go over the document together and send it to the State with a letter from Mr. Hoffmann pointing out the errors was **moved** by Councilman Bayley, **seconded** by Councilman Falotico and carried by a roll call vote of 6-0.

**RC: Council members:**

**YES: DiPaola, Bayley, Wolf, Knoller, Falotico, Downing**

IV. PROCLAMATIONS & CITATIONS

- Rachel Carson Birthday Commemoration – May 27<sup>th</sup>

V. APPOINTMENTS/RESIGNATIONS

Mayor Lamatina announced that there were no appointments or resignations.

VI. MINUTES FOR APPROVAL

- Regular and Closed Session Meeting Minutes of May 1, 2018

Councilwoman DiPaola requested that the minutes be amended to reflect that she stated she was the liaison to Buildings and Grounds as well as the liaison to the Library Board of Trustees on page four of the minutes.

☞ **Motion** to approve the Regular Meeting Minutes as amended and the Closed Session Meeting Minutes of May 1, 2018 was **moved** by Councilwoman DiPaola, **seconded** by Councilman Falotico and carried unanimously.

VII. CORRESPONDENCE

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

- Letter dated April 16, 2018 from Meyerson, Fox, Mancinelli & Conte, P.A.; Re: Dadak, LLC Subdivision at 34 Main Street, Westwood, NJ
- Resolution dated April 16, 2018 from Borough of Old Tappan; Re: Endorsement of Reginal Park at Oradell Reservoir
- Resolution dated March 27, 2018 from Borough of Paramus; Re: Requesting the Legislature hold a Public Referendum on the Potential Legalization of Recreational Marijuana
- Resolution dated April 24, 2018 from Borough of Paramus; Re: Opposing the Concealed Carry Reciprocity Act of 2017 and the Constitutional Concealed Carry Reciprocity Act of 2017
- Resolution dated May 1, 2018 from Borough of Wyckoff; Re: Support the Adoption of A-3736 into Law
- Letter from Lissette Aportela, Borough Clerk of the Borough of Tenafly; Re: Regional Park at Oradell Reservoir
- Resolution dated May 9, 2018 from Borough of Closter; Re: Supporting the Creation of a Regional Park Around the Oradell Reservoir

VIII. FINANCIAL BUSINESS

- Resolution No. 152-18 Bill List

☞ **Motion** to approve Resolution No. 152-18 Bill List was **moved** by Council President Knoller, **seconded** by Councilman Falotico and carried by a roll call vote of 6-0:

**RC: Council members:**

**YES: DiPaola, Bayley, Wolf, Knoller, Falotico, Downing**

IX. UNFINISHED BUSINESS

- Governor Signs Charitable Trust Legislation – Property Tax discussion – Mr. Hoffmann said that he, CFO Lauren Roehrer and Borough Auditor Gary Higgins had looked into this matter at the request of Mayor Lamatina. The Bergen League of Municipalities had put out a draft letter to be sent by mayors to U.S. Treasury Secretary Steven Mnuchin asking that the IRS issue an expedited ruling on the validity of creating a vehicle so that up to \$10,000 of taxpayer money could be used in lieu of itemized tax deductions. Mayor Lamatina requested that this topic be carefully monitored.

X. NEW BUSINESS

- Use of Emerson Woods Preserve by outside organizations – policy decision – Mr. Hoffmann discussed an upcoming Kids to Parks walk through Emerson Woods Preserve which would dovetail with a walk led by Bergen SWAN. He noted that Bergen SWAN intended to charge a minimum donation of \$10.00 and explained that this did not comply with Green Acres regulations. If the donation was changed to 'suggested' instead of 'minimum', it would satisfy the Green Acres code. Councilwoman DiPaola asked that this topic be opened to Ms. Lori Charkey of Bergen SWAN and Ms. Margaret Boyce of the Emerson Environmental Commission.

☞ **Motion** to open the meeting on this issue to Ms. Charkey and Ms. Boyce was **moved** by Councilwoman DiPaola, **seconded** by Councilman Falotico and carried by a roll call vote of 6-0:

**RC: Council members:**

**YES: DiPaola, Bayley, Wolf, Knoller, Falotico, Downing**

Lori Charkey, 141 Demarest Avenue stated she had been misinformed and the donation would be rephrased to be 'suggested' instead of 'minimum' to protect the Borough. She outlined the expenses associated with the walk including printing a brochure, insurance, refreshments and other overhead costs. She highlighted all the good works done by Bergen SWAN and hoped to have a better understanding so that they could work better together in the future.

Margaret Boyce, 92 Colonial Road discussed how much Bergen SWAN had done for the Borough and its residents including securing millions of dollars in grant funding to secure the Emerson Woods Preserve. She opined on the negative tone of recent emails and hoped that issues could be handled more discreetly and professionally in the future.

☞ **Motion** to close the meeting on this issue was **moved** by Councilman Downing, **seconded** by Council President Knoller and carried unanimously at 9:01 p.m.

- Stop signs on Palisade Avenue and at Soldier Hill Golf Course (previously Emerson Golf Course) – Councilman Bayley said children's safety was paramount and discussed the rate of speed of drivers travelling on Palisade Avenue. He suggested that stop signs be placed at several locations to protect children and other pedestrians. A resolution to approve this measure as a pilot program monitored by the Police Department was on the Consent Agenda.

Councilman Falotico said he had attended a traffic safety meeting on May 4<sup>th</sup> with Police Chief Mazzeo, Captain McDermott, Councilman Downing and the Borough Administrator. They discussed stop signs but also agreed that crosswalks and proper signage should be installed. They suggested limiting parking to one side of the street to allow the passage of emergency vehicles. Borough Engineer Gary Ascolese's input would be crucial to this initiative. They also intended to discuss areas around the schools and other locations throughout the Borough.

XI. INTRODUCTION OF ORDINANCES

Mayor Lamatina announced that Ms. Dietsche would read the following ordinance by title and it would be further considered at a Public Hearing to be held on June 12, 2018 at 7:30 p.m. in the Council Chambers of the Borough Hall, Municipal Place, Emerson, N.J. and published in the May 18, 2018 edition of the Ridgewood News. He added that this 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:**

**1558-18** AN ORDINANCE CREATING A PERMIT REQUIREMENT TO OPERATE A CRANE WITHIN THE BOROUGH OF EMERSON

**☞ Motion** to introduce Ordinance No. 1558-18 on first reading was **moved** by Council President Knoller, **seconded** by Councilman Falotico and carried by a roll call vote of 6-0:

**RC: Council members:**

**YES: DiPaola, Bayley, Wolf, Knoller, Falotico, Downing**

XII. ADOPTION OF ORDINANCES

**Second Reading & Public Hearing:**

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

XIII. REPORTS

- Mayor and Council

Councilwoman DiPaola said the Emerson Public Library held a Fancy Nancy Tea Party which was attended by about 60 boys and girls. She hoped that her announcements at the meetings were encouraging more people to attend these events. She was an advocate of the library and encouraged everyone to look at their flyers and take advantage of their programs. In addition, she had attended the first subcommittee meeting related to televising Council meetings. Others in attendance were Council President Knoller, Councilman Falotico and Mr. Hoffmann. She said the subcommittee would be coming up with plans to seek more information on the best way to televise the meetings. She noted that she was a huge advocate of bringing the government to the people and was glad that the subcommittee had been formed for this purpose.

Councilman Bayley gave the Department of Public Works report for the month of April and said their monthly recycling totals generated revenue of \$1,074.20. They were still chipping branches from the March 7<sup>th</sup> storm. Baseball fields had been prepared for Baseball Opening Day on April 21<sup>st</sup> and they had been focusing on repairing potholes. The department had participated in Bloodborne Pathogen training on May 10<sup>th</sup>. DPW Foreman Tom Carlos had travelled to Maryland to collect a military forklift. Police Officer Douglas Kearns had located the item through the 1033 program which provides used government equipment to municipalities.

In addition, the Environmental Commission had met in April and discussed various things they wanted to become involved with. He and Councilwoman Wolf had met with the Fire Department subcommittees to discuss LOSAP, equipment and the firehouse.

Councilwoman Wolf said the Fire Department held a very successful beefsteak dinner fundraiser recently with over 100 people in attendance. She gave the Fire Department monthly report for April. The Board of Health would be working with Eagle Scout Stephen P. Munson who would be helping out with the Health and Wellness Fair scheduled for October at Assumption Academy. They would support Mr. Munson's efforts by providing flu vaccinations, asthma screenings, a teddy bear clinic for kids and handouts about opioid awareness because October 6<sup>th</sup> would be Opioid Awareness Day. She outlined upcoming events associated with the Mayor's Wellness Campaign and said that the Board of Health would be sponsoring a Fall and Fitness Program once a month on Sundays on the green in Sunset Park and would include family and teen yoga on June 10<sup>th</sup> and July 8<sup>th</sup>.

Council President Knoller said the Finance Committee had met on April 24<sup>th</sup> to review the budget. They would continue to meet throughout the year so they could forecast for 2019, 2020 and 2021. Borough Auditor Gary Higgins had been a big help in assisting with the Borough's debt plan which would help with forecasting future budgets. He and Mr. Hoffmann had attended the Community Development Block Grant Pascack Valley presentation on April 26<sup>th</sup>. Mr. Hoffmann gave a tremendous proposal for \$160,000.00 in grant funding for Continental Woods drainage work and it was well received by those in attendance. It was nice to see the other administrators, mayors and council people who had attended all have very positive comments on the Borough's presentation. The requirements associated with the Community Development Block Grant for senior citizens had changed. The Borough would have to document active programs. They planned to work with other municipalities to share ideas and program and proposed yoga, balance and tai chi classes for seniors. He said there was a lot of excitement among the seniors about this initiative. There would be the opportunity to work with other communities to share some of these programs so each one did not have to reinvent the wheel. On May 3<sup>rd</sup> he had attended a meeting of the Chamber of Commerce and said that their membership had increased but meeting attendance was on the lower side. He commended Frank Di Dolci and Laura Litchult for doing a great job. The Chamber was organizing their first annual car show at Emerson Junior/Senior High School which would take place on June 9<sup>th</sup> from 9 a.m. until 3 p.m. On May 29<sup>th</sup>, the Emerson Police Department would be holding their biggest fundraiser, the Community Policing Annual Golf Outing. The funds raised would be used for the Community Policing Shop with a Cop program as well as the Cop Campout and Chief for a Day.

Councilman Falotico stated that the baseball field fencing still needed to be addressed. Mr. Hoffmann said that the DPW was unable to repair it and they had reached out to Emerson Fence. On April 23<sup>rd</sup> he had attended a Personnel Committee meeting with Councilman Downing. They had attended a meeting of the Volunteer Ambulance Corps on May 7<sup>th</sup>. He said that the Volunteer Ambulance Corps was looking for volunteers. He had met with the resident of 46 Spruce Avenue about drainage issues and would follow up again tomorrow at his home with Borough Engineer Gary Ascolese. He noted that the April 19<sup>th</sup> meeting of the Land Use Board had been cancelled but he had attended their meeting on May 3<sup>rd</sup>. Among the resolutions on that agenda had been the Armenian Home extension request, Northern Valley Developers major subdivision on Palisade Avenue and the Valley Office Park parking lot expansion on Old Hook Road. Their next meeting would take place on May 17<sup>th</sup> and on the agenda would be an application for Valero mixed use construction. On May 4<sup>th</sup> there had been a meeting with the Police Department and Appropriate Authority to discuss traffic issues, pedestrian safety and roadway signage as well as issues in and around the schools. Other topics included updating the pedestrian warning signs with new high visibility LED signs, ways to make crosswalks safer and are considering grant funding to help cover the cost of some of these items. They also discussed ways to improve safety on Palisade Avenue, Linwood Avenue, Main Street and other high traffic areas like Kinderkamack Road and Locust Avenue, Ackerman Avenue by Ackerman Park, Lincoln Boulevard and Kinderkamack Road, the Municipal Place, Thomas Avenue and Linwood Avenue intersection, High Street and Palisade Avenue, and Palisade Avenue and First Street and the need for stop signs. They had asked the Borough's traffic officers and Borough Engineer for assistance in some of these areas. He concluded by emphasizing that people needed to abide by the speed limit and better enforcement of the laws.

He participated in a webinar on the GSA's Borough surplus personal property donation program which was similar to the 1033 program but was the State's version and was for regular equipment like computers, furniture, motor vehicles and clothing. He had forwarded the information to Mr. Hoffmann for follow up. Another meeting with New Jersey Transit and all the people involved was scheduled for early June. Topics to be discussed included the Kinderkamack Road crossing and invoices for overcharges for busing while the project was ongoing.

Councilman Downing gave the monthly report for the Volunteer Ambulance Corps. The Police Department was doing their first-round evaluations as part of the new hiring process. He that there were some great candidates. The golf outing to benefit Emerson Community Policing was scheduled for May 29<sup>th</sup>. This year for the first time, the department was participating in the Pascack Valley Junior Police Academy along with Washington Township and Westwood. He was very grateful that Emerson children would be involved this year. Applications were available for the summer recreation program. He was looking forward to the softball fund raiser to be held on May 19<sup>th</sup> at the Westwood Recreation Center and would include battling pianos. The Recreation Commission had been meeting to coordinate the Summer Kickoff scheduled for Saturday, June 16<sup>th</sup>. He had attended the Eric Ayala Foundation Fundraiser. It was a well-attended event and raised over \$20,000.00.

Mayor Lamatina read a statement, noting the extremely favorable ruling for the Borough of Emerson issued by The Honorable Judge Padovano of the Superior Court of Bergen County on May 4, 2018 regarding two property owners' lawsuits against the Borough. This statement is hereto attached to the minutes. He thanked the Borough's counsel for their hard work on the application. Mayor Lamatina concluded by stating that the Fairness Hearing was scheduled for May 21<sup>st</sup> at 2:30 p.m.

- Borough Administrator Robert Hoffmann reported on the following:
  - The Borough's Memorial Day Observation would take place on Monday, May 28<sup>th</sup> at 11:00 a.m. at Monument Plaza. The American Legion Commander John Hogan was out of rehabilitation and would be taking over the planning with Post member John Teigen.
  - The Assumption Parish Carnival was scheduled to take place from Wednesday, May 16<sup>th</sup> through Sunday, May 20<sup>th</sup>.
  - There was a resolution on the Consent Agenda to confirm actions taken two weeks ago by the Governing Body who were gracious enough to authorize using additional Community Development grant funding for drainage work at George Road and Dogwood Lane. This would allow the Borough to use additional grant funding rather than having to return it. The project would be completed by June 15<sup>th</sup>. Instead of returning an amount in the five-figure range, the Borough would be returning only \$183.00.
  - On May 10<sup>th</sup>, Governor Murphy issued a conditional veto on legislation called S5 which would merge two police pension funds, the Local PFRS and State PFRS. There were 21 items the Governor said that he wanted the Legislature to consider in order to sign it so as to protect property owners from having to be burdened by additional taxes.
  - Last week was National Nurses' Week. Sean Adams, a reporter for News Radio 880, had interviewed Kay Hodges, the Borough's Board of Health nurse for the 'News from Main Street' feature. She has worked for the Borough for 77 years.
  - He commended the Department of Public Works and Police Department for working together on the 1033 program. The Police Department was able to locate a free forklift at Fort Mead, Maryland that would help the Borough be more productive. Some projects would be able to be completed more quickly and safely.
  - The deadline to apply to the Junior Police Academy was Tuesday, May 29<sup>th</sup>.
  - A new link on kitchen safety had been added to the Fire Prevention section of the website as the request of the Girl Scouts. He thanked the Girl Scouts for thinking in a safe way and helping the Borough post some safe information on the website.
  
- Borough Clerk Jane Dietsche had no report.
  
- Borough Attorney Wendy Rubinstein said that the Fairness Hearing would take place on May 21<sup>st</sup> at 2:30. She said they were quite excited by the extremely favorable ruling issued by Judge Padovano for the Borough. She said that it showed that requests for discovery they were making was not usually granted in prerogative writ actions and she thought that was why the judge was so upset at being taken down that road with absolutely nothing to sustain it. She noted that it had still cost the Borough money for what was essentially a fishing expedition.

#### XIV. PUBLIC COMMENT

☞ **Motion** to open the meeting to comments from the public was **moved** by Council President Knoller, **seconded** by Councilman Downing and carried at 9:48 p.m.

Jill McGuire, 154 Linwood Avenue revisited the earlier discussion regarding the petition for Certification of Eligibility and said that she had submitted it as a private citizen and followed the process. She had no problem with Mr. Hoffmann providing edits but explained that it was her petition. She said she would look over his edits with her attorney and submit it to the New Jersey Historic Preservation Office herself if she felt it needed to be corrected.

Todd Bradbury, 292 West Street, Closter said the Emerson Woods walk sounded good. He also shared his thoughts on recent comments in the paper related to business owners who did not live in the community and did not think that was a negative. He opined that local businesses, whether the owners lived in the Borough or not, were impacted by the Kinderkamack Road improvement project and should benefit from the improvements.

Paul Hulburt, 55 Jefferson Avenue asked how it was determined what items were placed on the Consent Agenda and opined that both Borough owned structures on Locust Avenue should be torn down at the same time to save taxpayer money.

Todd Bradbury, 292 West Street, Closter said he had seen a movie titled Little Pink House which discussed eminent domain issues and suggested that others watch it.

☞ **Motion** to close the meeting to comments from the public was **moved** by Councilman Downing, **seconded** by Council President Knoller and carried at 10:02 p.m.

XV. RESOLUTIONS ON CONSENT AGENDA NO. 153-18

Councilwoman DiPaola requested that Resolution No. 157-18 Authorize demolition of structure at 58 Locust Avenue and Resolution No. 159-18 Authorize installation of stop signs on Palisade Avenue be pulled for discussion and separate votes

☞ **Motion** to approve Consent Agenda No. 153-18 without Resolution No. 157-18 Authorize demolition of structure at 58 Locust Avenue and Resolution No. 159-18 Authorize installation of stop signs on Palisade Avenue was **moved** by Council President Knoller, **seconded** by Councilman Falotico and carried by a roll call vote of 6-0:

**RC: Council members:**

**YES: DiPaola, Bayley, Wolf, Knoller, Falotico, Downing**

☞ **Motion** to approve Resolution No. 157-18 Authorize demolition of structure at 58 Locust Avenue only was **moved** by Council President Knoller, **seconded** by Councilman Falotico and carried by a roll call vote of 6-0:

**RC: Council members:**

**YES: DiPaola, Bayley, Wolf, Knoller, Falotico, Downing**

☞ **Motion** to approve Resolution No. 159-18 Authorize installation of stop signs on Palisade Avenue only was **moved** by Councilman Bayley, **seconded** by Councilman Falotico and carried by a roll call vote of 6-0:

**RC: Council members:**

**YES: DiPaola, Bayley, Wolf, Knoller, Falotico, Downing**

- CA 154-18 Tax Lien Redemption – 44 Pavonia Avenue
- CA 155-18 Award a one-year contract for Elevator Inspection Services to NJ Technical Services in the amount of \$4,082.00
- CA 156-18 Confirm award of contract for Continental Woods drainage improvement at George Road and Dogwood Lane
- CA 157-18 Authorize demolition of structure at 58 Locust Avenue
- CA 158-18 Oppose legislation for H.R. 38 and S. 446 - Concealed Carry Reciprocity Act of 2017 and the Constitutional Concealed Carry Reciprocity Act of 2017

- CA 159-18 Authorize installation of stop signs on Palisade Avenue
- CA 160-18 Refund of Tax Overpayments (2<sup>nd</sup> Quarter 2018)
- CA 161-18 Authorize Boswell Engineering to perform survey work for the  
Broadway Walking Path grant funded project
- CA 162-18 Authorize Mayor Lamatina to sign Solid Waste Service Agreement with  
Bergen County Utilities Authority

XVI. CLOSED EXECUTIVE SESSION - Resolution No. 163-18

Mayor Lamatina announced that this item was being postponed to the June 12<sup>th</sup> meeting.

~~#18-05/15-15 Contract Negotiations - Vivian Avenue Drainage N.J.S.A. 10:4-7~~

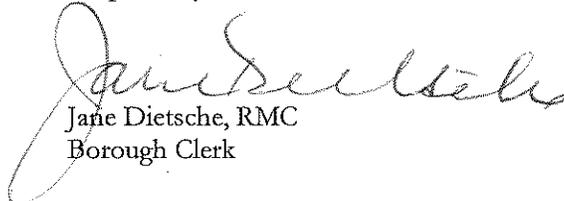
~~XVII. RECONVENE~~

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

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 Falotico and carried at 10:22 p.m.

Respectfully submitted,

  
Jane Dietsche, RMC  
Borough Clerk

On May 4, 2018, The Honorable Gregg Padovano, of the Superior Court, Bergen County, issued an extremely favorable ruling for the Borough of Emerson in the two (2) property owners' lawsuits against the Borough whereby those owners seek to derail the redevelopment of Block 419.

I have carefully reviewed Judge Padovano's Decision and thought it would be helpful if I reproduced the relevant passages from the Court's Decision, with the headings in bold supplied by me to summarize the actual quote:

### **PROPERTY OWNERS HARASS AND UNREASONABLY DELAY**

"The court has not been provided with any information which reveals that the record below should or must be supplemented. The court finds that Plaintiffs' assertions that the discovery sought is required to address an alleged predetermined scheme or improper plan to designate the subject parcels and to conspire with the designated redeveloper or mislead the public and subject property owners is wholly unsupported by the record or argument and without merit and appear to be nothing more than an attempt to harass and unreasonably delay." (emphasis added)

### **NO GRAND CONSPIRACY**

"Plaintiffs' allegations that the Mayor conducted discussion with the planner, designated developer or other parties does not indicate some grand conspiracy as implied by Plaintiffs."

### **ONLY ISSUE IS WHETHER THERE IS SUBSTANTIAL EVIDENCE BEFORE THE LAND USE BOARD**

"Reviewing the allegations of the complaint, it is clear that the focus of any deposition would go directly and solely to the deliberative process of the Mayor and other Borough officials. Plaintiffs' allegations that the designation of the subject property as an area in need of redevelopment is not contingent upon the examination of the thought process of the mayor, councilmember and/or other Borough officials but rather is based upon whether there was substantial evidence to support said designation."

### **PLAINTIFFS HAD THEIR OPPORTUNITY BEFORE THE LAND USE BOARD**

"Plaintiffs attempt now to seek and present information which should have and could have been presented during the public hearings subject of this action.... The court finds that the discovery sought under the subject subpoenas in no way impacts the Plaintiffs ability to prosecute the

complaints nor is the information requested likely to lead to relevant information in connection with the allegations under the complaint."

### **NO ALLEGATION OF FRAUD OR CONFLICT; JUST A FISHING EXPEDITION**

"By counsel for Plaintiffs' own admission, there is not an allegation of fraud or conflict being asserted. The court finds, based upon all the facts presented, that Plaintiffs' subpoenas are clearly nothing more than a fishing expedition."

### **NOTHING MORE THAN A MEANS TO HARASS AND DELAY**

"In fact, the court finds that the discovery sought (which is overly broad and seeks irrelevant information as to the ultimate issue for review) falls well beyond the bounds of the record below which is to be reviewed by this court and is nothing more than a means to harass and delay."

### **REOPENING THE LAND USE BOARD HEARINGS WOULD BE UNFAIR TO THE PUBLIC AND BOROUGH**

"Plaintiffs are not afforded the ability to reopen the hearings in this matter under the guise of discovery. To afford such indulgence would in effect subject every action of a municipal body to potentially be subject to reopening of hearings through litigation which the public and public bodies had previously believed to be final and concluded."

### **NOT A SHRED OF EVIDENCE**

"The court has not been presented with any shred of evidence which would imply that the discovery sought would impact the ultimate issue to be determined by this court."

### **NO EVIDENCE OF PROCEDURAL ISSUES WITH THE HEARING AND DESIGNATION**

"There has been nothing presented to this court which indicates that the allegations of procedural non-compliance has actually occurred or that such claims warrant the discovery now requested by Plaintiffs."

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These word for word quotes from the Decision, which is 100% in favor of the Borough, are indicative of how Judge Padovano's views the Plaintiffs' case.

Lou Lamatina, Mayor  
Borough of Emerson

May 15, 2018