

REGULAR MEETING MINUTES

Oceanport, New Jersey
September 6, 2001

- REGULAR MEETING:** The Regular Meeting of the Oceanport Mayor and Council was called to order on September 6, 2001 at 8:00 P.M.
- MEMBERS PRESENT:** Councilpersons Apruzzi, Gatta, Lyons, Wolfe, Silkworth and Mayor Gemma.
- OFFICIALS PRESENT:** Borough Clerk, Patricia L. Varca and Borough Attorney, Francis A. Margalotti.
- INVOCATION:** Borough Chaplain Berry gave the invocation.
- PLEDGE OF ALLEGIANCE:** Mayor Gemma led the audience and members of the Council in the flag salute.

As copies of the minutes from the regular meeting held on August 16, 2001 had been made available to the members of the Governing Body, Councilman Apruzzi moved to waive the reading of same and approve the minutes as presented by the Borough Clerk. It was seconded by Councilwoman Gatta and unanimously approved by Council.

CLERK'S REPORTS:

1. Raffle license application made by the Oceanport PTO, to be held on Sept. 21, 2001, 50/50 cash on premise raffle.

The Clerk reported that the paperwork was found to be in order, after which Councilman Wolfe moved to approve the raffle application. It was seconded by Councilwoman Gatta and approved by Council.

2. Application for membership to the Port-au-Peck Chemical Hose Fire Co. made by Joseph J. Fiore.

The Clerk advised that she was in receipt of the approved paperwork from the Police Department for this applicant, after which Councilman Wolfe moved to approve said application. It was seconded by Councilwoman Gatta and approved by Council.

COMMITTEES:

COUNCILMAN APRUZZI: Councilman Apruzzi reminded everyone that the Summer's End Festival was scheduled to take place on Sunday, September 9 and there would be music starting at 5 p.m. and the fireworks will end the day. He advised that fireworks donations were still needed and commented that we were very lucky this year that Monmouth Medical Center, through Dr. Vozos, made a rather large donation to our funds which has helped us tremendously, but we still need seed money for next year's event and he again reminded everyone that the fireworks are paid for through donations only and no tax payers dollars are used for this event.

COUNCILWOMAN GATTA: Councilwoman Gatta reported that the flu and pneumonia clinic will be held on Friday, November 2nd from 1:30-3:00 p.m. at the First Aid Squad Building and the same restrictions will be in place, as were last year and only the residents living in towns served by the Monmouth County Board of Health will be eligible.

Councilwoman Gatta reminded all residents that the Oceanport First Aid Squad's fund drive was still in progress and to date they have received donations from 39% of the residents in town and she encouraged anyone who has not as yet sent in their donation, to please do so and to be as generous as possible.

COUNCILMAN LYONS: Councilman Lyons advised that shortly before coming to the Council meeting tonight, he received a telephone call asking him to give blood, due to the current blood shortage and commented that he had never been asked by telephone to donate blood. He urged all residents who are able to contact the Blood Bank located on Sycamore Avenue in Shrewsbury to find out how they can donate blood.

Councilman Lyons stated he signed a voucher this evening covering a training session recently held, which was excellent and we had a great response and he felt this was a tribute to our Fire Chief and the members who turned out and participated in this training session and he also thought this is what makes our Fire Department the envy in this County.

Councilman Lyons also reminded everyone that the Port-au-Peck Firehouse is also conducting their annual fund drive and also urged everyone to give as generously as they can to these volunteers who are ready to put their lives on the line for our protection.

Councilman Lyons reported that he had been asked by the Mayor to prepare a report on a proposal to expand the present Library and the Borough Council members have not yet been able to discuss this matter, but he hoped to do so after we complete our meeting tonight and go back into our workshop meeting. He also advised that the Library representatives will be going before the Capital Improvement Committee and urged all residents interested in this project to attend this meeting being held on Thursday, September 27, 2001 at 7:30 p.m. to make their views known.

COUNCILMAN WOLFE: Councilman Wolfe reported we have a vacancy in the Public Works Department and moved to appoint Charles Jackson as a full time employee in that Department as a Helper III effective September 10, 2001. It was seconded by Councilman McGann and approved by Council.

Councilman Wolfe moved to award a bid to D & D Construction for the emergency repair work on Main Street at both Monmouth Park Place and Brookview Drive in the amount of \$25,970. It was seconded by Councilman McGann and approved by Council.

Councilman Wolfe offered his congratulations to Joseph Fiore on becoming a member of the Port-au-Peck Chemical Hose Company and commented that he had coached him on one of his earlier soccer teams and has watched him grow up.

COUNCILMAN MCGANN: Councilman McGann reported that the negotiations between the PBA and the Governing Body have been completed and a new contract has been signed and in that regard, he called for the introduction of an amendment to the salary ordinance to include those new

salaries for 2001 and asked the Clerk to read the proposed ordinance by title only, as follows: **AN ORDINANCE TO AMEND AN ORDINANCE ENTITLED "AN ORDINANCE TO FIX AND DETERMINE THE SALARIES OF CERTAIN BOROUGH OFFICIALS" PASSED AND APPROVED MARCH 16, 1939.**

Councilman McGann moved to approve this ordinance on first reading. It was seconded by Councilman Wolfe.

The Clerk called the roll:

AYES: Councilpersons Apruzzi, Gatta, Lyons, Wolfe, McGann and Silkworth.
NAYS: None.
ABSENT: None.
ABSTAIN: None.

Councilman McGann then moved to hold the public hearing on this ordinance at the regular meeting scheduled to be held on September 20, 2001 and to advertise same in accordance with law. It was seconded by Councilwoman Silkworth.

The Clerk called the roll:

AYES: Councilpersons Apruzzi, Gatta, Lyons, Wolfe, McGann and Silkworth.
NAYS: None.
ABSENT: None.
ABSTAIN: None.

Councilman McGann then showed a flood area map that had been drawn up showing the various flood areas in the Borough by Mr. Monteforte and Mr. Karinja of the Flood Mitigation Committee and was very thankful for their efforts, which shows the areas of the repetitive flooding since the storm of 1992 and a copy will be forwarded to FEMA and Dr. Farrell who is helping us with our flood mitigation work.

Councilman McGann explained that Oceanport is presently classified number 10, which is the highest number with regard to flood insurance rates for our residents and we are working on many different issues in order to lower that number. He continued that we have to get to at least a 9 or an 8 before FEMA representatives will come in to review our records and/or allow the Borough to apply for any grants, since your rating must be under 10. Councilman McGann stated that one-third of all households in Oceanport have flood insurance and if we can lower our rating, we will be able to allow those residents to pay less each year on their coverage and reduce their costs by 10-15%.

Councilman McGann also explained that the areas that need to be corrected that have been discussed are the intersection of Monmouth Boulevard and Myrtle Avenue; Port-au-Peck and Genesee Avenue, the dip as you enter Gooseneck Point Road and have a topo done of the lower section of Cayuga Avenue.

COUNCILWOMAN SILKWORTH: Councilwoman Silkworth reported that a representative of our architectural firm will be reviewing the work that needs to be done on the various roofs for the Borough Hall, Port-au-Peck Firehouse and Public Works Garage and will be preparing specifications

in the near future to go for bid and see exactly what we will be able to afford to fix this year, depending on what the bids come in at and how much money is available.

MAYOR GEMMA: Mayor Gemma reported he recently met with representatives of the water company with regard to the continuing problems that occurred when the Sewer Authority was working on Port-au-Peck Avenue. He advised that the problem is that the present water main is very old and whenever any work is done nearby, there is constantly main breaks in the system. He has requested that the main be replaced prior to the Borough going forward with the re-paving project for this street, which we had been successful in getting a DOT grant for this work and we don't want to go through a complete re-paving project, only to have the street torn up afterwards due to the old main and hopefully, they will agree to replace the main prior to our paving the street in the spring of 2002.

Mayor Gemma announced that Fort Monmouth will be undertaking some forced protection exercises and due to this will be limiting access through the Fort on September 12th and everyone should keep this in mind.

Mayor Gemma also advised that he is in receipt of a memo from our Deputy Borough Clerk, Kim Jungfer, informing the Governing Body that the insurance company is of the opinion that the siren can be repaired and do to the repairs being possible, cannot justify replacing the siren with a new system. Mayor Gemma asked both Council members Lyons and Silkworth to find out from the insurance company what type of a number we are talking about in the amount for the repairs to the system and discuss this at our next meeting.

Mayor Gemma urged everyone in the Community to come out and join in the festivities at the Summer's End Festival and also echoed his thanks to Dr. Vozos and Monmouth Medical Center for their generous donation and commented there would be a banner at the Park expressing the Borough's appreciation.

Mayor Gemma then opened the meeting to the public for any comments or questions they might wish to make.

Jackie Cole stated she was here this evening because she thought the Library situation was going to be discussed, to which Mayor Gemma explained that the Governing Body is going to review Councilman Lyon's report in the work shop meeting following this meeting and anyone who is interested is welcome to come in and listen, but after we discuss this matter, Councilman Lyons is going to go before the Capital Improvement Committee and then we will review all the comments received to that point and then we are going to conduct a public hearing on the entire matter so that everyone has an opportunity to come out after reviewing all the facts.

Councilman Lyons pointed out that he had been asked to write a report which he has done and advised that he has no intention of modifying his initial report and if anyone wants to make comments or add to it, that is their privilege, but he does not intend to change his document.

Tony Sempkowski, Cayuga Avenue stated he has not been here in awhile and commented he is here on the same issue of the flooding problems on Cayuga and he has been in contact with both County and State agencies and has been advised that Oceanport has made no contact with any of the various agencies with regard to available grant monies and no applications have been submitted.

Councilman McGann advised that the Flood Mitigation Committee, together with Dr. Farrell of Stockton State College, have been gathering all of the required information necessary to lower the Borough's classification and it is his understanding, through the people Mr. Semkowski named previously, that until the Borough can lower the classification from a ten to at least a nine or eight, we are not able to apply for any funds.

Following a lengthy discussion on this matter, Councilman McGann suggested that he and Mr. Semkowski sit down together and exchange information to see exactly what they have both been told and go forward from there.

Mrs. Kinslow, West Long Branch had questions concerning the application before the Planning Board regarding the construction of a crematorium at which point both Councilmen Wolfe and Lyons left the meeting room, since they are members of the Planning Board.

Mrs. Kinslow raised a question to the Governing Body asking if they would consider writing a letter opposing the permits being applied for in connection with this application, to which the Mayor Gemma commented that just prior to tonight's meeting he checked and this application is still pending before our Planning Board and as long as it is still before the Board, we cannot prejudice that application, however, he continued as soon as it is no longer pending before the Planning Board, that is something that we can certainly follow up on, but right now, we cannot comment on this matter.

Mrs. Kinslow stated she was somewhat confused because the area that pertains to the two permits will effect issues with the river, where she is aware that the town has done much monitoring of the water quality and feels that if these two permits would have an affect on the water quality, then the town should be able to object.

Mr. Margalotti responded to Mrs. Kinslow stating that it is a matter of jurisdiction and the action by the Planning Board is taken as an independent body and the Governing Body of any particular town does not have any authority over the functions of the Planning Board. He continued that whichever way the Planning Board decides that application, whether they grant approval or deny the application, whoever is aggrieved by the Board's action will then have the right to appeal, but not to the Mayor and Council, but directly to the courts. He explained that because of that and in order to make sure that the deliberations before the Planning Board are undertaken without giving rise to a charge by one side or the other that the Board is not operating truly independently but under coercion or some pressure by another political body and that is why this Council adopts a hands off policy as long as the application is pending before the Board.

Mr. Margalotti stated as the Mayor indicated earlier, if that application should be withdrawn or terminated in some other fashion, so that it is no longer pending before the Board, then that restriction or inhibition would no longer apply and certainly would not prevent the Council from addressing any issue relevant to the former application that had been pending.

Mrs. Kinslow raised issues with regard to the quality of the wildlife in the area, as well as the water quality issues she had previously addressed and felt that the Council should be able to make some type of statement, but Mr. Margalotti again reiterated that these are issues that should be brought up at the Planning Board where the application is being heard, since they are going to be making the decision on this matter.

Mrs. Kinslow commented that one of the people noticed on this Application is Dr. Vozos on Burnt Mill Circle and she questioned the possible impropriety of the donation to the fireworks of the Borough by Monmouth Medical Center in light of the hospital's incinerator being shut down and felt that they may be doing this in order to use the crematorium for their own purposes, to which it was pointed out by Mr. Margalotti that these are two different types of uses and there are many other crematoriums in surrounding towns, already in operation.

Mayor Gemma explained that last April we held a health screening which was through the Meridian Health System and Dr. Vozos, Executive Director of Monmouth Medical Center wanted to make a donation as well to our Borough and did so through donating to the firework's fund, which was short this year and this had absolutely nothing to do with the application.

Mrs. Kinslow asked if the Borough would be willing to amend the zoning to prohibit an incinerator or the construction or operation of a crematorium within a certain distance from a school or residential area, to which Mr. Margalotti commented that there are State regulations governing the location of crematoriums and in that regard, those State regulations would preempt any kind of zoning type regulations to be imposed by any town.

Sal Vecchione, 1 Woodbine Way stated he and several other of the concerned residents met with the Mayor last week and it went very well and we did not try to prejudice any application, but went on the Mayor's other comments made in the newspaper that the State Officials were not doing enough to help us in this crusade against the crematorium, which were the Mayor's comments, not his. Mr. Vecchione asked the Mayor if the Council could petition the Assembly and the Senate to change the cemetery law to reflect something more practical rather than if you are a cemetery you can own, build and operate a crematorium even if the property is located in a residential zone.

Mr. Vecchione advised that there is the cemetery law established the Cemetery Board which is really a banking arm to look after our monies in trust funds and he found out there is \$50,000 in a maintenance fund. Mr. Vecchione stated the only other criteria is if an incinerator was placed in a spot where you are allowed to, the smoke stack only has to be 75' away and that is the DEP regulation and he felt this was too broad of a requirement when there are homes and schools in the area and the Legislature should amend these laws. Mr. Vecchione stated he did not agree that this Governing Body could not exercise some leadership to go to court and fight this matter for the residents of this neighborhood and Borough.

Mr. Vecchione stated that the law states that the cemeteries do not pay taxes, but at one cemetery, the caretaker's wife was running a business on a house located on the cemetery property and the town went to court and won. He continued that he and the other neighbors asked the Mayor to check out a situation at the Woodbine Cemetery property where it appears a commercial landscaping business, for profit, is being run on the non-profit corporation's property, because it is a residential R-2 Zone and if this is a business being run, than that portion should be taxed as a business, since the cemetery property is assessed at over three million dollars.

Mr. Vecchione addressed his next comment to Councilman McGann in that there is no more serious flooding problem in this Borough than what occurs on Eatontown Boulevard other than people who lost their homes and almost their lives near Councilman McGann's home during the 92 storm. He felt that his area of the town does not exist and it took him three years to get the County to agree that the bridge on Oceanport Avenue was falling down and he has related this information to the Mayor, Councilwoman Gatta and the Borough Engineer and the only response he receives is that

it is a County road. He produced pictures of a fire truck going through those flooded areas and questioned if the truck is destroyed or a fireman falls off the truck, do we then say its not the Borough's problem. He also brought many pictures of Eatontown Boulevard during a rainstorm, showing people who had driven into the flooded waters and had to be rescued from their cars near the old Concurrent Building and felt that someone should be addressing this issue.

Councilman McGann stated that as he had explained to Mr. Vecchione in a phone conversation, the flooding problem he is talking about is not caused by tidal problems, but if he gives him the photos, Councilman McGann will be happy to right to the County about this matter and try and find out what is bring done to resolve this issue.

Mr. Vecchione lastly stated that he has been present at other meetings of the Planning Board on applications in his neighborhood and the matter was handled without anyone insulting each other and the neighbors won the case on the points they raised, but no one was rude and this application took over a year. He continued that he has never experienced the rude behavior shown by the current Planning Board to the objectors and he felt that the Mayor appoints that Board and is responsible for they manner in which the are treating the public. Mr. Vecchione gave several descriptions of things that have been said at the Planning Board meetings dealing with the crematorium application and felt that they were most disrespectful to the public and one of the members appears to be asleep during the entire meeting, which is a disgrace to this Borough.

Mr. DeVito, 25 Massaro St. stated that the Borough Attorney commented earlier that any State Law would supercede any Borough regulations for the crematorium, but there was a statement made at one of the Planning Board meetings that he attended, wherein the applicant's lawyer said that there were no State Laws or local ordinances that regulate the location of the crematorium other than the wetlands situation. He asked if we can than proceed as a town when the current application is over with, can we adopt an ordinance for future issues like this.

Mr. Margalotti stated that if there are no regulations and it may not necessarily be regulations imposed by the Cemetery Board, but there could be environmental regulations that imposed through the auspices of the DEP, if there are no such regulations in existence, then he would say that a municipality would have the authority, through its zoning powers, to set reasonable restrictions on development of this type and that is something that we should certainly research further.

Mr. DeVito asked if the residents have done research on this matter and have documented information, can they present this information and how do they go about doing this, to which Mayor Gemma advised that a copy of their documents should be forwarded to our Borough Clerk, Mrs. Varca and she will distribute them to the Borough Council and Attorney. He continued that once that happens, there is nothing to prevent Mr. DeVito from attending the next Council meeting and asking where the Council is on that information.

Mr. DeVito asked if the Borough's Environmental Committee adopt an ordinance as well regarding this issue, to which Mayor Gemma explained that we might forward a copy of a proposed ordinance to our Environmental Commission for their review and comments, but only the Governing Body has the authority to adopt the ordinance.

Ed Miller, 94 Hiawatha Ave. stated he heard something earlier from the Mayor that he found rather confusing when the Mayor stated that the Council would not make a comment until the application was not in front of the Planning Board any longer. He continued that there are two

situations that he can think of in that situation, one being that the Planning Board has already okayed the application or denied it, but in either case, it would not matter what the Governing Body would say anyhow.

Mayor Gemma explained that Mr. Miller was incorrect and stated that, as an example, if the Planning Board okays or denies an application and it is no longer in front of the Board and the Council is asked to challenge a separate permit, such as the DEP Permit, we can then challenge that permit without prejudicing the Board. He continued that another way would be if the applicant withdrew the application from the Board and as long as it is not pending before the Board awaiting a decision, then the Governing Body would not be prejudicing an application before the Board.

Mr. Miller asked if the Planning Board denies the application, from what he has observed in attending meetings, feels that the applicant is going to appeal the Board's decision, but the Mayor responded that based upon the record made in front of the Board and what we, the Council does after that, has no impact in terms of that record.

Mr. Miller commented that there is only one real situation that he can fathom wherein the Mayor would be comfortable in making a statement and that would be that the Planning Board would deny the application and then they would be sued by the applicant and he does not see any other way this could come about.

Mr. Margalotti commented that his statement is not correct because he is forgetting one other scenario being that if for some reason, the Board decided to dismiss the application for lack of jurisdiction, which is a possibility.

Mayor Gemma stated that as everyone is aware, there are many issues surrounding this application and the Mayor insisted that we cannot discuss this matter any further because we do not want to prejudice our position.

Mr. Miller then commented that Mr. Margalotti should not have made the statement he just made, to which Mr. Margalotti responded that he is not commenting on the status of this particular application or its legal merits, he was asked a hypothetical question and he responded with a hypothetical answer. Mr. Margalotti reiterated that Mr. Miller asked if there was some way in which, other than a decision on the application before the Board could be no longer regarded as pending in order for the Governing Body to take action and he was just answering in a hypothetical manner, stating that if the Board decided that the particular application had not met the jurisdictional requirements and in that instance also, the application would no longer be pending before the Board.

Mrs. Kinslow wanted to just add to Mr. Vecchione's comments about the members of the Planning Board and stated that she too observed someone sleeping through the hearings and she has concerns about this person voting on the application and she also objected to the comments made by Mr. Baxter, which were reported in the newspapers and she feels uncomfortable with the statements made and the manner in which the members conduct themselves.

Mrs. Kinslow sent a letter to the Mayor and Council and she was informed by the Planning Board Secretary that she gave it to the Attorney for the Planning Board and Mayor Gemma stated Mr. Menna most likely has the letter and we will request copies of same.

Kerin Slattery, 10 Elliott Place commented that he is a member of the Port-au-Peck Chemical Hose Fire Co. presently serving as Captain and a member of the First Aid Squad and we recently put together a water rescue plan and the last thing he was asked to do was meet with all the emergency department heads, which he has done and has furnished them with all the information that was requested. He was wondering if this Plan had been discussed and a decision made regarding its approval.

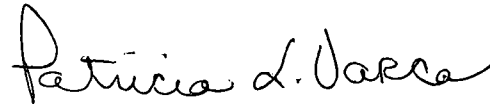
Mayor Gemma asked if anyone has seen this plan other than the first draft, to which no one had received any comments back and Councilman Apruzzi will check with Chief Bebout.

As no one else wished to be heard from the public, Mayor Gemma closed the public portion of the meeting.

Councilman Wolfe moved to approve the vouchers on the Bill List dated September 6, 2001. It was seconded by Councilman Apruzzi and unanimously approved by Council. 2001 VOUCHERS PAID \$159,889.94. 2001 VOUCHERS PAID THIS MEETING \$665,582.66. TOTAL 2001 VOUCHERS \$825,472.60. TOTAL RECREATION TRUST \$531.91. TOTAL DOG REGISTRY \$537.20. TOTAL CAPITAL \$41,676.03. (SEE BILL LIST)

At 9:20 p.m. Councilwoman Silkworth moved to adjourn this meeting until the next regular meeting scheduled to be held on September 20, 2001 at 8:00 P.M. It was seconded by Councilman McGann and unanimously approved by Council.

Respectfully submitted,



PATRICIA L. VARCA
BOROUGH CLERK