

REGULAR MEETING

Oceanport, New Jersey
June 30, 1994

REGULAR MEETING: A regular meeting of the Oceanport Mayor and Council was called to order on June 30, 1994 at 8:02 P.M. :

MEMBERS PRESENT: Councilpersons Clark, McGee, Filippone, Miller, Taylor, Wolfe and Mayor Cavanagh.

OFFICIALS PRESENT: Borough Clerk, Patricia L. Varca and Borough Attorney, Francis A. Margalotti.

PLEDGE OF ALLEGIANCE: Mayor Cavanagh led the audience and members of the Council in the Flag Salute.

CLERK'S REPORTS:

1. Raffle license application made by the Monmouth Park Charity Fund, Inc., to be held on 9/4/94, 50/50 cash raffle.

The Clerk advised that the paperwork was found to be in order and the required fee had been paid, after which Councilman Clark moved to approve same. It was seconded by Councilman McGee and unanimously approved by Council.

Mayor Cavanagh stated this meeting is really a special meeting the Council decided to hold in order to complete the two items as listed on the agenda. He explained the first item is the continuation of the public hearing on the street vacation and commented further that at the last meeting, Mrs. Williams had brought with her several documents, which he had requested the Borough Attorney to review concerning the property in question and since she had taken the time to do the research, he felt that it was appropriate to have the Borough Attorney review her findings.

Mayor Cavanagh stated for the record, that he is in receipt of a letter addressed to him from Mrs. Williams, which he has read and outlined her feelings about the issue that we were discussing. Mayor Cavanagh then asked the Borough Attorney to comment on this matter and he also wanted to state that the thing that concerned him, as well as the other members of the Council, was the question of whether or not the fee ownership of this property was the Borough's, as is shown on the Tax Map, or somehow may belong to the Federal Government, which possibility Mrs. Williams raised at the last meeting.

Mr. Margalotti commented that the issue that needed to be clarified was whether or not the unnamed street, which the Council had initiated action on, was in fact a public right of way and owned by the Borough of Oceanport as an un-improved right of way or was it owned by the Federal Government in connection with some prior taking or a prior deed, which in the latter case, would deprive the Borough of any jurisdiction or authority to vacate property which was not publicly owned. Mr. Margalotti stated he checked the deeds and other documents which were evidence of the title acquired by the Federal Government back in 1942, which copies were provided by Mrs. Williams and

2.1 they were the same documents he had reviewed about 2 years ago when Mr. Dillon had first informed the Council of his desire to have that un-named street vacated. Mr. Margalotti commented that his examination of the documents and title, confirm that what we are dealing with, is in fact, a public right of way, to which the Federal Government does not hold fee title to and prior to 1942, the area that is now the motor pool and the property which lies to the south west, which is basically the area where the subject un-named street is located, plus the other un-named street which parallels it and is located on the other side of Mrs. Williams property and both of which connect into Riverside Ave., together with the property in-between, one of which is Mrs. Williams' lot and then immediately between her lot and the edge of the motor pool is a much smaller lot, which is lot 5 on the Borough Tax Map and is part of the property which eventually came into the Dillon ownership, together with the waterfront lot, which is Lot 4 on the other side of the un-named street, all of that property was owned by Fanny Burke and in 1942 the United States of American filed a declaration of taking, which was the first step in an effort to acquire, through condemnation, additional property to expand the territory of Fort Monmouth and in that Declaration of Taking there is a metes and bounds description, which defines the area which was the subject of the taking.

Mr. Margalotti stated that the condemnation proceeding was concluded in a Judgment in the Condemnation, which again repeated the same metes and bounds description. He has examined the description in both those recorded documents and plotted them and he is satisfied that the metes and bounds description describe only what is now known as the Motor Pool area and that is further evidenced by the fact that at the end of the metes and bounds description, in both of the mentioned documents, there was some language which was added, which stated "together with the use of the right of way approximately 50' road existing between the so called Kennedy and Key tracks, (that is basically the private lots one of which is Mrs. Williams lot and the other is the Dillon property), and extending around the said property on the easterly and southerly sides thereof and then running into Riverside Ave.", which he felt basically described the course of this un-named, un-improved street which the Borough has proposed to vacate.

Mr. Margalotti explained that when you look at the detailed metes and bounds description that was in the document and you see that there is added to it the right of way reference, you come to the conclusion that apart from plotting the metes and bounds description, the plotting of which does not include the right of way, that what the Federal Government acquired by the condemnation, was a fee simple title or absolute title to the motor pool area and they also acquired a right of way across the un-named paper street and for that purpose Oceanport was also named as a defendant in that condemnation proceeding. He again stated that after his review of this matter, he can only come to the conclusion that in fact, that un-named street is a public right of way and it may very well be by virtue of this condemnation proceeding, that the Federal Government has a right of way across that un-named street, which is separate and apart from the general public right of way that exists by virtue of it being a public right of way and if that is the case, then there would be no restriction for the Borough to proceed if it chooses to do so, to vacate that un-named street and if it chooses to do so, the result of that vacation would be that half of the title would go to one abutting owner and the other half to the other abutting owner and it would then become privately owned, divided in half, but that private ownership would still be subject to a paramount right of way which was acquired by the Federal Government, in the condemnation proceeding which occurred in 1942. He further explained that what this means is that neither owner could construct any improvement or put any type of obstruction just on that 50' wide strip, because that would be inconsistent with the right of way which the Federal Government might have, by virtue of that 1942 condemnation proceeding.

Mr. Margalotti stated that as a result of his research, he believes because of the statements³ he just made, the Borough, if it chooses to do so, does have the legal right to proceed to vacate that 50' wide strip.

Mrs. Williams, Riverside Ave., asked where it shows that the Government has given this property to the Borough, to which Mr. Margalotti explained that the Government did not have to give it to the Borough, because it was created by a dedication prior to 1942, when Fanny Burke created the individual lots, which subsequently became Mrs. Williams' property and the neighboring property and at the time those lots were created, the two parallel public rights of way were created essentially through dedication and the fact that they were never improved by the Borough does not detract in any way from their status as a public right of way.

Mrs. Williams asked where and when were they dedicated because the history and maps that she gave Mr. Margalotti, where the pieces of property are located, especially the one which is on her west side, just got lost in the shuffle and further stated that everyone has to remember that years and years ago, that entire property belonged to Fanny Burke and there were many different ideas for that area, as well as the property changing hands many times, but then World War II happened and somehow these properties got on the tax map, which she felt should never have happened, because the properties were never dedicated.

Mr. Margalotti responded that Mrs. Williams has provided tracings of tax maps prior to 1940, which although the lots have different lot numbers, do show the rights of way in existence. Mr. Margalotti stated he felt that Mrs. Williams' question was misplaced because it is not a question of how do we know that they were ever created or dedicated because he felt that the fact that at some point in time, records were available to the Tax Assessor and the Municipal Engineer which caused them to draw tax maps which showed these streets, creates a presumption that they are, in fact, public rights of way. He advised Mrs. Williams that in the material she has produced, she has not shown anything which would be inconsistent with that conclusion and certainly at the time of the declaration of taking was filed by the Federal Government to expand the parameters of Fort Monmouth, the Federal Government recognized and was under the belief that there was in existence a 50' wide public right of way, because it attempted to acquire an easement over that right of way, so that by 1942, the records were such as to have shown the existence of a public right of way and he felt that this was what was crucial. He also commented that he has never seen anything to show us that in fact, those public streets were never in fact dedicated and never came into being.

Mr. Margalotti also stated that Mrs. Williams had referred to a letter she had received from Fort Monmouth, which stated that the Fort owned it, but the only letter he found in the packet Mrs. Williams supplied was a letter that had been sent in May of 1993 to Mr. Dillon by Col. Barriman and that letter does not support what Mrs. Williams said it does, because she had indicated that the letter stated that the Fort owned that strip, but that is not what the letter says and he stated that the letter makes reference to the acquisition through condemnation of the motor pool area from Fanny & Irving Burke in 1942 and goes on to describe what was then referred as a 5.9 acre irregular parcel on which is was bounded and says that the Burke parcel had "use of the right of way of a property approximately 50' road then running into Riverside Avenue", which was really an extraction of the reference that was in the original condemnation proceeding. He continued that it goes to say that the Burke parcel was contiguous on two sides with the prior boundary of Fort Monmouth and it has since been incorporated within the present boundary of the military reservation and "the road was a putative access which had been mapped by the local jurisdiction but never constructed and its projected intersection with the extension of Riverside Avenue could lie within Oceanport Creek and

4

accordingly this Command has no foreseeable need for such access and at this time has no intention to use the old right of way. Actions to dispose of this right of way at some time in the future are planned barring the unlikely event a compelling need for this right of way should arise".

Mr. Margalotti commented that consistent throughout that letter is the reference to this strip as a right of way and no where in that letter does the Col. Barriman make a statement that the Federal Government through the Department of the Army claims title to the right of way, as it claims title to the motor pool area and he felt that Mrs. Williams may have misunderstood what the letter states.

Mrs. Williams stated that she still felt that there was so much going on at that time and the piece of property on the other side of her home, which says it is a right of way, but after her research, she felt it just got lost in the shuffle of all the properties and that was according to all the deeds she looked at and researched and this is the road that Mr. Dillon wants to use to access his property.

Mr. Margalotti stated that Mr. Dillon would have the right to do, since it is a public right of way not being vacated and he again stated that Mrs. Williams would have to have proof that the tax maps are incorrectly drawn, the burden would be on her.

Mrs. Williams stated that is why she is asking the Attorney to please show her that this is so, to which Mr. Margalotti commented that she has not produced any deeds, nor any chain of title and he wanted her to understand that he is not being argumentative, he is just stating for the record what you would need to show and explained that she would have to show a chain of title that would show that the entire area, including what appears on the tax map, is a public road and, is in fact part of her chain of title and that at no time was there ever a dedication or a deeding of any nature of that strip of property that would have given the public rights in that strip and nothing has been presented to show that the tax map is incorrect and does not reflect what factually happened historically.

Mrs. Williams stated that is what she asked the Borough Attorney to do to which he commented that this is not the burden of the Borough because she is the one who would be contesting the accuracy of the tax map and the burden must be on the person who is contesting the tax map to produce the proof to show that the tax map is legally and historically incorrect and it is not up to the Borough to prove that its tax map is correct.

Mrs. Williams stated she looked and could not find anything that said this was dedicated or given to the Borough at any time or to any other town, to which Mr. Margalotti stated it was given in the sense of a deed, but was created at the time that those lots were in effect subdivided by Fanny Burke and in order to have access to those lots she at that time deemed it necessary to create as part of that development plan, those rights of way and the fact that they were never improved does not necessarily mean they that they did not become dedicated rights of way.

Mrs. Williams stated that what the Attorney is saying then is that the access road that Mr. Dillon wants to use to get to his property even though it has not been dedicated or anything like that to which Mr. Margalotti stated that he did not say that it was not dedicated. He stated that the Borough may have some authority to require some improvements to that road, but it is none the less a public right of way and if that is the only means of access to someone's privately owned property, the Borough is not in a position to say that they cannot have access to your property, that you pay taxes on, but you cannot get to it nor develop it.

Mrs. Williams stated this is not the only issue and continued that in order for Mr. Dillon to build

on that lot, he has to make her small piece of property an island and we will have our own driveway, we will have Riverside Avenue, his access road and his driveway and she did not think anybody would want to live like that.

Mr. Margalotti stated that what Mrs. Williams just mentioned as well as other points that she raised in her letter to the Mayor, which he mentioned earlier, about problems with drainage and the water fowl in the area, anticipated problems of their view of the water being blocked and all those types of comments really were for the consideration of the Board of Adjustment when Mr. Dillon made his application for variance to develop that lot, because it is within their jurisdiction to consider all of those elements in deciding whether or not the Dillon's should be given the variance or not.

Mrs. Williams commented that the Zoning Board and the Board Attorney seemed to accept whatever Mr. Dillon said and the Board never asked Mr. Dillon for a recent survey and used one that was over 20 years old and they allowed it to be used with no question, and she was questioning the size of the property, which is extremely small and in the resolution granting the variance stated it was an R-3 Zone, which is incorrect because it is an R-1 and that had been established at the very first meeting.

Mr. Margalotti explained to Mrs. Williams that the problem the Governing Body has is that the Zoning Board of Adjustment is an autonomous body and the Mayor and Council have no legal authority or jurisdiction to second guess the Board and if any citizen feels that they have rendered an erroneous decision or they are aggrieved by a decision whether it is to grant a variance or deny a variance then the law provides a mechanism for an appeal and that appeal is taken to the Superior Court Law Division directly and there is no appeal to the Governing Body because we have nothing to do with those decisions nor any ability to alter them in any way.

Mrs. Williams stated that when the variance was granted, the Board published the decision in the paper, but there was nothing with regard to the contents of the resolution and when she called for copies of the minutes, she was told that they did not keep minutes any more and that she could come and listen to the tape if she wanted to review same and a short time later, a friend of hers came to the Borough Hall and obtained a copy of the minutes from that very meeting. She stated she then wrote three letters to the Zoning Board and received no answer, but Mr. Margalotti stated that the letter did not secure her rights because if she challenged the legality of the Board's decision and felt that they had exceeded their authority and their decision not supported by law, you need to take an appeal to the Courts within 45 days after the date of publication of the notice of decision.

Mayor Cavanagh stated he wanted Mrs. Williams to understand that the Governing Body is trying to do our function and complete it and the wisdom of granting a variance is not something that we have anything to do with and the Zoning Board is charged with the responsibility of deciding that and whether we agree with what they do or not, it would not be very helpful to her. He has no basis to say whether they were right or wrong because he did not hear the evidence, nor did anyone else on the Council.

Mayor Cavanagh advised Mrs. Williams that if she is disappointed that she did not receive a response from the Board of Adjustment, he was sure that the Board would realize this because there is a Board member sitting in tonight's audience and perhaps you will receive an answer to your question shortly. Mayor Cavanagh continued that from the Council's prospective, he did not want her to go away from here not thinking that we would not take the time to look at what documents she had submitted and evaluate what her argument was to the Council. He stated that Mr. Margalotti is trying to say to her, he thinks, is that very simply by all of the publicly recorded documents we can

find, the street we are talking about is there and available to be vacated and we cannot accept that it is not there, even if we were to empathize with you on the merits or some of the environmental things she mentioned, the Governing Body must abide by the law and if the publicly recorded documents set up a chain of title and it shows it there and shows it as being on the tax map for the past 50 years or so, we have an obligation to accept that it legally exists. He explained that the reason he carried the hearing on this matter was because he wanted to be sure there was nothing in her packet, that would have justified what she was saying and in that case, we would have had to re-think the matters.

Mrs. Williams asked several other questions regarding to the loss of her view, the environmental issues as well as the loss of the buffer between her property and Fort Monmouth, to which Mayor Cavanagh advised that these are all matters which should have been brought up at the Zoning Board, because the Governing Body has no jurisdiction over these types of matter.

Mrs. Williams asked who is going to take care of the maintenance on the road which leads into the properties, since her family has always done this and now there will be more cars and traffic and it is a lot of work, to which Councilman Wolfe advised that he thought the blacktop was going to be extended.

Mayor Cavanagh stated that it is either mentioned in the resolution granted by the Zoning Board or the Construction Official will make it a requirement prior to a C.O. being issued for the property, since it is now a dirt road.

Mrs. Williams also mentioned that there are no street lights in her area and asked if the Council could have the street lights put back on, since now there will be other people traveling around, to which Mayor Cavanagh questioned that there are no street lights there, to which Mrs. Williams stated the lights are there, but they are burned out and Mayor Cavanagh assured Mrs. Williams that we can easily take care of this matter.

Councilman McGee asked if the street is vacated, then Mrs. Williams actually picks up 25' of protection and ownership and put the other property that much further away from her, to which Mr. Margalotti stated it puts it 25' closer, because the two properties on either side of that street are going to divide it in half and makes them common and abutting properties. Councilman McGee stated that both properties would be increased in size by 25', to which Mayor Cavanagh stated was correct and Councilman McGee then asked if it were not vacated, Mr. Dillon would have access to use that entire 50' piece, to get to his property as a Borough right of way, to which Mr. Margalotti stated that was correct, although Mr. Dillon needs this 25' in order to build on the property.

Councilman Clark moved to close the public hearing on this matter. It was seconded by Councilman Wolfe and unanimously approved by Council.

Councilman Clark moved to adopt this ordinance on second and final reading and to advertise same in accordance with law. It was seconded by Councilman Taylor.

ORD.#
654

The Clerk called the roll:

AYES: Councilpersons Clark, McGee, Filippone, Miller and Taylor.
NAYS: NONE.
ABSENT: NONE.
ABSTAIN: Councilman Wolfe.

Mayor Cavanagh stated the second matter on our agenda tonight is that we are going to withdraw the proposed ordinance as currently constructed and we are going to re-introduce it with a language amendment.

Councilman Clark moved to withdraw the original ordinance as it pertained to personal watercraft regulations. It was seconded by Councilman McGee and unanimously approved by Council.

Councilman Clark then called for the introduction of an ordinance regarding regulations for personal watercraft and he asked the Clerk to read the proposed ordinance as follows: **AN ORDINANCE REGULATING THE TRANSPORTATION ACROSS AND LAUNCHING FROM CERTAIN PUBLIC LANDS AND RIGHTS OF WAY WITHIN THE BOROUGH OF OCEANPORT, IN THE COUNTY OF MONMOUTH, NEW JERSEY OF PERSONAL WATERCRAFT, AND PRESCRIBING PENALTIES FOR THE VIOLATION THEREOF.**

Mayor Cavanagh stated for the record and for the public, although there is no legal obligation, asked the Clerk to read the amended language, which she read as follows: **"B. The restrictions contained in this section shall not apply to any public boat launching facility, where it shall be lawful to transport and launch personal watercraft consistent with the provisions of N.J.S.A. 12:7-62 et seq."**

Councilman Clark moved to approve this ordinance on first reading. It was seconded by Councilman McGee.

The Clerk called the roll:

AYES: Councilpersons Clark, McGee, Filippone, Miller, Taylor and Wolfe.
NAYS: NONE.
ABSENT: NONE.
ABSTAIN: NONE.

Councilman Clark then moved to hold the public hearing on this ordinance at the regular meeting scheduled to be held on July 21, 1994 and to advertise same in accordance with law. It was seconded by Councilman McGee.

The Clerk called the roll:

AYES: Councilpersons Clark, McGee, Filippone, Miller, Taylor and Wolfe.
NAYS; NONE.
ABSENT: NONE.
ABSTAIN: NONE.

Mayor Cavanagh opened the meeting to the public for any comments they might wish to make and as no one wished to be heard, Mayor Cavanagh closed the public portion of the meeting.

Councilman Clark moved to approve the bills as listed on the Voucher Register dated June 30, 1994. It was seconded by Councilwoman Filippone and unanimously approved by Council. TOTAL 1994 VOUCHERS \$155,919.60. TOTAL 1994 VOUCHERS PAID THIS MEETING \$61,366.77. TOTAL 1994 OPERATING FUND \$217,286.37. TOTAL MONEY MARKET ACCOUNT

\$175,000.00. TOTAL GENERAL LEDGER-OCEANPORT BOARD OF EDUCATION \$359,752.60.
(SEE VOUCHER REGISTER).

At 8:47 P.M. Councilman Taylor moved to adjourn this meeting until the next regular meeting scheduled to be held on July 21, 1994 at 8:00 P.M. It was seconded by Councilman Miller and unanimously approved by Council.

Respectfully submitted,



PATRICIA L. VARCA
BOROUGH CLERK