

REGULAR MEETING MINUTES

Oceanport, New Jersey
June 23, 1997

- REGULAR MEETING:** The Regular Meeting of the Oceanport Mayor and Council was called to order on June 23, 1997 at 8:08 P.M.
- MEMBERS PRESENT:** Councilpersons Gemma, Filippone, Miller, Taylor, Wolfe, Silkworth and Mayor Cavanagh.
- OFFICIALS PRESENT:** Borough Clerk, Patricia L. Varca and Borough Attorney, Francis A. Margalotti.
- INVOCATION:** The invocation was given by Borough Chaplain Berry.
- PLEDGE OF ALLEGIANCE:** Mayor Cavanagh led the audience and members of the Council in the flag salute.

As copies of the minutes from the regular meeting held on June 5, 1997 had been made available to the members of the Governing Body, Councilman Wolfe moved to waive the reading of same and approve the minutes as presented by the Borough Clerk. It was seconded by Councilwoman Silkworth and unanimously approved by Council.

CLERK'S REPORTS:

1. Application for membership to the Oceanport Hook & Ladder Fire Company made by James A. Mellish.

Councilman Wolfe moved to approve said application. It was seconded by Councilman Taylor and unanimously approved by Council.

2. Resolutions renewing liquor licenses for the 1997/98 licensing period:

R-97-48 The Clerk read resolution **R-97-48** renewing the liquor license of S & S Restaurant t/a the Olde Wharf Inne, after which Councilman Miller moved to approve same. It was seconded by Councilman Wolfe and unanimously approved by Council.

R-97-49 The Clerk read resolution **R-97-49** renewing the liquor license of Arthur & Alvina, Inc. t/a Dug Out Tavern, after which Councilman Miller moved to approve same. It was seconded by Councilman Wolfe and unanimously approved by Council.

R-97-50 The Clerk read resolution **R-97-50** renewing the liquor license of Oceanport Spirits Inc., after which Councilman Miller moved to approve same. It was seconded by Councilwoman Silkworth and unanimously approved by Council.

COMMITTEES:

COUNCILMAN GEMMA: Councilman Gemma reported that the Borough has received notice from the County Planning Administrator that the Cross Acceptance Program will begin over the next few months and there will be meetings with the County to review our Cross Acceptance Plan as compared to theirs, and even though we will be adopting ordinances in accordance with the recent Master Plan Review, following our meetings with the County, it may be necessary to amend certain areas as well as introduce new ones.

Councilman Gemma advised that the Cable Committee had been asked to review a Social Contract provided from Comcast Cable and Joe Lyons did a terrific job looking this over and provided some recommendations and suggestions which he is going to turn over to Councilwoman Silkworth and ask her to review the report and give the Council her advise on this matter.

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COUNCILWOMAN FILIPPONE: Councilwoman Filippone called for the second reading and public hearing of an amendment to the Zoning Ordinance and asked the Clerk to read the Affidavit of Publication and the proposed ordinance by title only: **AN ORDINANCE TO AMEND AND SUPPLEMENT AN ORDINANCE ENTITLED THE "BOROUGH OF OCEANPORT ZONING ORDINANCE" PASSED AND APPROVED July 3, 1969.**

Mayor Cavanagh opened the meeting to the public for any comments or questions they might have regarding this subject only.

As no one from the public wished to be heard on this matter, Councilwoman Filippone moved to close the public hearing on the zoning ordinance amendments. It was seconded by Councilman Miller and unanimously approved by Council.

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

The Clerk called the roll:

AYES: Councilpersons Gemma, Filippone, Miller, Taylor, Wolfe and Silkworth.
NAYS: NONE.
ABSENT: NONE.
ABSTAIN: NONE.

Councilwoman Filippone offered her congratulations to Councilman Miller who retired this year from Shore Regional High School and she attended his retirement luncheon and they gave him a great roast and it was well deserved.

Councilwoman Filippone stated she was in receipt of the Oceanport First Aid Squad Captain's monthly report and commented that during May they received 41 calls, traveled 402 miles for 353 man/woman hours with 8 total advanced life support calls and 5 calls to Monmouth Park. She reported although they are extremely busy, this also includes time for training, which is mandatory and even still, they are continually receiving applications for new memberships, which is not happening in the Squads in surrounding towns.

Councilwoman Filippone commented that these volunteers are always there for us, 7 days a week, 24 hours a day and reminded all residents that they are undertaking their fund drive and urged everyone to give what they can to this worthy organization.

COUNCILMAN MILLER: Councilman Miller reported the June 11 sampling done by the Oceanport Water Watch Committee had numbers which were quite a bit reduced from the last sampling with the highest fecal coliform numbers being 500, 240 and 220 at three sites, but the others were under 50 which he felt was due to the dry weather we have been experiencing. He also advised that sampling was done at the 8 sites contiguous to the shore line near the track and nothing there was over 77 with the samples taken near Casa Comida being zero, which shows the improvement with the track hooking up to the Sewer Authority.

Councilman Miller also advised that the Waterways Committee was out over the weekend helping to stand up some of the markers in the river which the Coast Guard had not gotten around to doing yet as well as removing some large floatables to make it safer for the boaters.

Councilman Miller reported that the tot lot at Blackberry Bay Park is under construction and is progressing and he thanked Tom Crochet and his men who worked on this on Saturday in all the heat and did a great job in moving this along and the project should be completed within a week or so.

Councilman Miller stated that on Monday, June 16, the Oceanport PBA Local 364, cooked for the 450 students at Wolfhill School as they competed in the Field Day Event and the PBA arranged for the donation of 350 hamburgers and hot-dogs from MidLantic Foods in Long Branch and on Tuesday, June 17, did the same for the 8th Grade Year Book signing at Maple Place School.

Councilman Miller reported that at the Maple Place School graduation award ceremonies, Mary Hayden and Patrick Ross were recipients of the first annual Philip J. Budinski Community Service Award and each was given a Certificate of Merit and \$100 and the award is for an eighth grade boy and girl who exemplifies Ski's commitment to the community.

Councilman Miller stated that he does not really consider himself as retiring, but feels he has graduated from High School after 34 years and he could not have done it with a finer group of young people and continued that the Class of 1997 was an extraordinary group made up of artists, mock trial people, 7 young people who were National Merit scholars and 3 were scholarship winners, which we have never had before, championship sports teams and 149 graduates accrued 2.8 million dollars in grants and scholarships and he offered his congratulations to Councilman Wolfe on his son's recent graduation.

COUNCILMAN TAYLOR: Councilman Taylor congratulated Councilman Miller on his retirement and commented that any time they go anywhere, he is always running into a former student, which has become a joke between them, since he always finds a former student throughout the County.

Councilman Taylor reported that the Borough will be recycling our old telephone books again this year and there will be a marked container out in the recycling drop off area and reminded all the residents to bring their old phone books over and just asked that they make sure they place it in the correct container.

Councilman Taylor stated the next item he had was a resolution with regard to garbage and trash bids received on April 28, 1997, but prior to asking the Clerk to read same, requested that the Borough Attorney make a statement first.

Mr. Margalotti, Borough Attorney, stated that prior to April 28, 1997 the Borough had advertised for bids for renewal of its garbage collection contract with the current one expiring on June 30, 1997. He continued that on April 28, 1997 bids were received from three contractors and as allowed by law, the Borough determined to review the bids and hold them without award for the maximum of 60 days and on May 1, following the receipt of the bids, the United States Court of Appeals for the Third Circuit rendered a decision in a case of Atlantic Coast Demolition and Recycling Inc. vs the Board of Chosen Freeholders of Atlantic County and in that decision, the Court of Appeals affirmed an earlier judgment which had been rendered by the United States District Court that certain portions of the New Jersey Solid Waste Management Act violated the Commerce Clause of the United States Constitution and were therefore, unenforceable.

Mr. Margalotti stated that this State law and a number of regulations promulgated pursuant to it by the NJ Department of Environmental Protection, basically requires municipalities to dispose of their solid wastes in certain designated landfills and since contractors are required to use those landfills at higher than market dumping fees, the regulations have compelled municipalities in the past to incur steadily increasing costs for garbage disposal. He continued that when the District Court entered the earlier decision, it stayed the effect of its judgment for two years and on appeal the United States Court of Appeals affirmed the holding of the lower Court that, in fact, these portions of the State Act were unconstitutional, but it found that the lower Court had no legal justification to enter a two year stay of the effectiveness of its decision and entered a much shorter stay until such time as the United States Supreme Court would either refuse to hear a further appeal from the Court of Appeals decision or took some other action.

Mr. Margalotti stated that the effect of that decision by the Court of Appeals, on the very heels of this Borough having received bids for a renewal of its garbage collection contract, had a profound impact on the Borough and put the Borough in a very awkward position, because on the one hand if the holding of the Court of Appeals was sustained on further review and the State Law and the Regulations under it were declared to be invalid and, therefore, unenforceable, that meant that contractors were no longer bound to use designated landfills and could in effect shop around for alternate disposal sites at competitive rates and incurring substantial savings on the cost disposal which would be hopefully passed back to the municipalities.

Mr. Margalotti explained that the Borough was faced with somewhat of a dilemma since it has certain obligations under the Local Public Contracts Law about awarding these contracts consistent with that law, but by the same token, it did not want to award a contract for three years only to find out that because of the changes in the law in this area, that it would be paying much higher costs for its disposal, then if the contract had been bid and awarded after the law had become settled. He continued that the Borough, faced with that dilemma and on the advice of Counsel, this Governing Body has decided in effect, to reject all bids and to authorize the Borough Engineer to revise the bid specifications consistent with the recent changes in the law and to re-advertise for bids as quickly as possible, so that there will be no undue delay in providing for a renewal of those services under a contract awarded in strict compliance with the Local Public Contracts Law.

Mr. Margalotti commented that obviously the Borough is faced with the additional problem that the existing contract will expire on June 30, 1997 and the collection of solid wastes is an activity which the Borough, because of a number of health and safety factors, cannot allow to lapse and must make provision for continuation and, therefore, for the purpose of continuing this vital service to the residents of the town, the Governing Body will have authorized an extension of the existing contract on a month to month basis for a term not to exceed 6 months and the monthly price at which

that contract will be continued will be consistent with the price bid by the existing contractor, Marpal, so that the taxpayers not only are assured of a continuation of this vital service, but also are able to get that done with some savings in costs, while the Borough is in the process of re-advertising for bids. He also stated that it is also the intent of this Borough and its Governing Body to act at all times in strict compliance with the Local Public Contracts Law, but at the same time, the Borough cannot ignore the fact that there is a vitally important service which must be continued at all costs, but that service must be the subject of a bid submission based on what we know to be and what we think to be the current state of the law.

Mr. Margalotti added the fact that the United States Supreme Court has visited this issue in other cases and in the process, has examined similar laws in other States and those laws have been declared unconstitutional by the U.S. Supreme Court and it is on the basis of these prior holdings that the industry appears to be somewhat unanimous in its anticipation that the decision of the Third Circuit Court of Appeals will ultimately be sustained by the U.S. Supreme Court in one form or another. He stated that with this explanation just given, the Council has before them for its consideration, the following resolution, which he asked the Clerk to read.

R-97-51 The Clerk read resolution **R-97-51** regarding the garbage and trash bids received April 28, 1997, after which Councilman Taylor moved to approve same. It was seconded by Councilman Wolfe and unanimously approved by Council.

Mr. Margalotti added that he has based his opinion given to this Governing Body, in part, on conversations which he had with officials of the NJ Division of Local Government Services and the Department of Community Affairs, who were of the opinion, after consulting with State Officials in the Department of Environmental Protection, that given the recent changes in the law as the result of these Federal Court decisions, that this provided the municipality with sufficient justification to reject all bids and to proceed to re-bid the contract.

R-97-52 **COUNCILMAN WOLFE:** Councilman Wolfe asked the Clerk to read resolution **R-97-52** authorizing the refunds of property tax overpayments, after which he moved to approve same. It was seconded by Councilwoman Silkworth and unanimously approved by Council.

R-97-53 Councilman Wolfe asked the Clerk to read resolution **R-97-53** approving the submission of a grant application to the DOT for the reconstruction of Pocano Avenue, after which he moved to approve same. It was seconded by Councilwoman Silkworth and unanimously approved by Council.

R-97-54 Councilman Wolfe then asked the Clerk to read resolution **R-97-54** approving the submission of a grant application to the Dot for the reconstruction of Wardell Circle, after which he moved to approve same. It was seconded by Councilman Miller and unanimously approved by Council.

COUNCILWOMAN SILKWORTH: Councilwoman Silkworth advised that the concrete repair at the Community Center will be taking place in the near future and will be coordinated with the activities at the Center.

Councilwoman Silkworth congratulated Councilman Miller on the beginning of his new life.

MAYOR CAVANAGH: No Report.

Mayor Cavanagh then opened the meeting to the public for any comments or questions they might have at this time.

PETITIONS FROM THE PUBLIC:

Steven C. Rubin, Attorney for W.T. DeLisa, stated that there was no opportunity to address the Council prior to the vote on the resolution, but he wanted to make it a matter of record at this time that Mr. DeLisa's company was the low bidder and as was pointed out by Counsel for the Borough, that it was anticipated that the contractors bidding on that did anticipate the law change and did reflect in their bids lower bids, and commented that you will note that all the bids received were lower and, in fact, Marpal was lower than the previous year's contract with the Borough of Oceanport and Mr. DeLisa was substantially lower than that bid, therefore, they feel that it is inappropriate if the Borough is going to throw out all the bids, not to afford the DeLisa Company the opportunity of entering into a month by month arrangement with the Borough, at the lower bid, which would reflect a more substantial saving to the Borough of Oceanport. Mr. Rubin continued that basically what the Borough is doing is allowing on a month to month basis, the bid of the higher bidder to be accepted by Oceanport to continue on an interim basis and they feel there is nothing that would prevent the Borough of Oceanport from passing on the more substantial savings to the citizens by allowing the low qualified bidder to enter into an agreement on a month by month basis if the Borough of Oceanport feels it is justified throwing out all the bids.

Mr. Mark McCue, Sea Girt Avenue wanted to bring attention to the Borough Council about a paving project the Borough took on in the latter part of 1996, to which Mayor Cavanagh advised that the Council had just discussed this matter during their work shop meeting.

Mr. McCue stated he was here to read his letter into the record, to which the Mayor advised that everyone has received a copy of his letter and if Mr. McCue wanted to, he could read his letter after which the Mayor would give him an answer, or he could do so now, to which Mr. McCue stated he would prefer hearing the answer to his problem on his street.

Mayor Cavanagh stated that it was decided after discussing this matter with the Council and reading his letter and the fact that there is money left over on this project, the Borough Engineer suggests that if we pave the rest of the two streets, Sea Girt and Spring Lake, which were left unpaved, that this would eliminate his immediate problem with the swale in front of his home and the Council authorized the Engineer to go forward with this work and Councilman Wolfe also concurred with this decision as the Public Works Council Liaison.

Mr. McCue stated he was pleased to hear that a solution was found and asked if the trench in front of his home would be removed, to which both the Mayor and Councilman Wolfe stated the overlay of the other two streets will correct the swale and Mr. McCue was assured that the project upon completion would be inspected for the present ponding problem, since it is especially bad during the winter months.

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

Councilman Wolfe moved to approve the bills as listed on the Voucher Register dated June 23, 1997. It was seconded by Councilman Gemma and unanimously approved by Council. TOTAL 1996 VOUCHERS PAID THIS MEETING \$540.00. TOTAL 1997 VOUCHERS \$240,280.79. TOTAL 1997 VOUCHERS PAID THIS MEETING \$74,648.84. TOTAL 1997 OPERATING FUND \$314,929.63. TOTAL PUBLIC ASSISTANCE II ACCOUNT \$532.50. TOTAL TRUST ACCOUNT \$652.61. TOTAL RECREATION TRUST ACCOUNT \$278.50. TOTAL GENERAL LEDGER-TAX OVERPAYMENT \$5,602.92. TOTAL GENERAL LEDGER-GARDEN STATE ELECTRICAL INSPECTION \$881.00. (SEE VOUCHER REGISTER).

At 8:42 P.M. Councilwoman Silkworth moved to adjourn this meeting until the next regular meeting scheduled to be held on July 17, 1997 at 8:00 P.M. It was seconded by Councilman Miller and unanimously approved by Council.

Respectfully submitted,



PATRICIA L. VARCA
BOROUGH CLERK