

REGULAR MEETING

Oceanport, New Jersey
June 16, 1994

- REGULAR MEETING:** The Regular Meeting of the Oceanport Mayor and Council was called to order on June 16, 1994 at 8:00 P.M.
- MEMBERS PRESENT:** Councilpersons Clark*, Filippone, Miller, Taylor, Wolfe and Mayor Cavanagh.
*Councilman Clark arrived at 8:10 P.M.
- MEMBERS ABSENT:** Councilman McGee.
- 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 Governing Body in the flag salute.

As copies of the minutes from the regular meetings held on May 23 and June 2, 1994 had been made available for review by 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 Filippone and approved by Council, with the exception of Councilman Taylor who abstained from voting on the minutes from May 23, since he was not present.

CLERK'S REPORTS:

1. Raffle license applications made by the following:

- a) Monmouth Park Charity Fund, Inc., to be held 07/02/94, 50/50 cash raffle.
- b) Monmouth Conservation Foundation, to be held 10/1/94, prize: 94 Ford Mustang Convertible.

The Clerk advised that the paperwork was found to be in order and the required fees had been paid, after which Councilman Miller moved to approve said raffle applications. It was seconded by Councilman Taylor and approved by Council.

2. Resolutions renewing liquor licenses for the 1994/95 licensing period:

R-94-45 The Clerk read resolution **R-94-45** renewing the liquor license of Olde Wharf Chef's Inc. t/a Olde Wharf Inne, after which Councilman Wolfe moved to approve same. It was seconded by Councilwoman Filippone and approved by Council.

R-94-46 The Clerk read resolution **R-94-46** 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 approved by Council.

The Clerk read resolution **R-94-47** renewing the liquor license of Oceanport Spirits, Inc., after which Councilman Miller moved to approve same. It was seconded by Councilman Wolfe and approved by Council.

COMMITTEES:

COUNCILMAN CLARK: ABSENT. (Arrived at 8:10 P.M.)

COUNCILWOMAN FILIPPONE: In the absence of Councilman Clark, Councilwoman Filippone called for the second reading and public hearing of an amendment to the Zoning Ordinance with regard to the number of members on the Zoning Board of Adjustment and she asked the Clerk to read the Affidavit of Publication and the proposed ordinance by title only, as follows: **AN ORDINANCE TO AMEND AN ORDINANCE ENTITLED "THE BOROUGH OF OCEANPORT ZONING ORDINANCE" PASSED AND APPROVED ON JULY 3, 1969.**

ORD.#
653

Mayor Cavanagh opened the meeting to the public for any comments they might care to make on this subject only.

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

The Clerk called the roll:

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

ORD.
654

Councilwoman Filippone called for the second reading and public hearing of an ordinance regarding the vacation of an un-named street off of Riverside Avenue and asked the Clerk to read the Affidavit of Publication and the proposed ordinance by title only, as follows: **AN ORDINANCE ABANDONING, VACATING, RELEASING AND EXTINGUISHING ANY AND ALL PUBLIC RIGHTS IN AND TO AN UN-NAMED STREET RUNNING OFF OF RIVERSIDE AVENUE IN BLOCK 105, IN THE BOROUGH OF OCEANPORT, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY.**

Mayor Cavanagh opened the meeting to the public for any comments on this subject only.

Mrs. Linda Williams, 61 Riverside Avenue asked if the Borough is vacating the rights to this property because they do not own the property and the Federal Government does hold the ownership and deeded rights over this property.

Mr. Margalotti, Borough Attorney stated that according to all public records and the Borough Tax Map, the portion of the un-named street which is the subject of this vacation, is a public right of way and it ends at the property line which is the boundary of Fort Monmouth and he stated that it is a public right of way and not part of the Fort Monmouth property nor owned by the Federal Government. Mr. Margalotti also informed Mrs. Williams that he has looked at an Abstract of Title covering this area and there is no indication that the Federal Government has any claim of right to this un-improved, vacant street and it is being vacated because it really has no public value and therefore, there is no need to continue it as a public right of way and it dead ends at the Fort

Monmouth property line and the effect of vacating this portion of this un-improved street basically would result in the division of that portion of the street in half and pass the title by operation of law to each of the abutting owners on both sides of that portion of the un-improved street.

Mrs. Williams stated that she does have proof that the Government does have the rights to that property and although Mr. Margalotti stated that he had investigated this matter, but she has done so as well and she has a letter from the Federal Government stating that they do have the rights to this piece of property.

Mr. Margalotti asked if we are talking about rights of ownership, to which Mrs. Williams stated the Government has a right of way because when they purchased Lot 3 in that area, they also received a deed and right of way to that portion that the Borough is trying to vacate.

Mayor Cavanagh asked if Mrs. Williams had the copy of the document she is speaking about with her, to which she stated she has a copy of the letter from the Federal Government and a copy of two deeds, one from the Government and one from the Hall of Records in Freehold.

Mr. Margalotti stated that even if this were true, it would not be a conflict for the Council to take the action to vacate this portion of this un-improved right of way, which has never been used, for the reason that if the Federal Government does have a right of way over that strip by some prior deed of easement from a prior owner, then the vacation by the Borough would not effect that easement, if in fact it has priority. He explained that the vacation of that street and the passage of the division of title to the abutting property owners, would be valid, but that ownership would just be subject to the continuing right of way which the Federal Government might have had previously.

Mrs. Williams questioned if this situation would remain as the Attorney just explained, even though the Borough would split the property between the two property owners, to which he stated it would make no difference, because an easement over private property is a very common occurrence, so if the Federal Government takes the position, and we are not aware that it has, but assuming that it takes the position that it has by some prior conveyance or agreement, has a right of way over that un-improved strip, the action that the Council would be taking tonight to vacate the public right in that un-improved strip, would not be inconsistent with that vacation because the title by operation of law, would be divided equally between the two abutting owners and that title would continue to be subject to whatever claim of easement or right of way that the Federal Government might assert.

Mayor Cavanagh explained that what the Attorney has just said, is that what the Federal Government has, they will keep and the ownership switch will not alter their right to use the property in question.

Mrs. Williams stated that the question she has is that the Borough does not really own any part of that road and explained that many years ago, this area was not on the tax map, although it does appear there now, and there was a lot going on before the war and many ideas and drawings were being done, and she felt that this area was never formally divided into streets and there were never any paper streets there either.

Mr. Margalotti stated that he has reviewed the Title Records and from all of the recent evidence that is available and by going by what is on the tax map, which is based upon the documentation provided to a Municipal Engineer at one time, when the map was drawn up, the

evidence would indicate that that portion is a public right of way and certainly, no one has ever attempted or asserted any claim of ownership to dispute the fact that what this map depicts as a public right of way, although it is an un-improved right of way, is otherwise and for all of the available information, there does appear to be an un-improved public right of way.

Mayor Cavanagh stated that since there is no urgency on this street vacation, as a courtesy to Mrs. Williams for taking the time for coming out tonight and for the research she has done, asked if she would be willing to leave her information with us and allow Mr. Margalotti to review the file and she may have to address any questions in the file that Mr. Margalotti may have.

Mayor Cavanagh suggested that we table this ordinance tonight, so that everyone is comfortable that they have reviewed all the paperwork and make sure there is nothing in her file to contest what Mr. Margalotti feels is the correct situation and we will table this discussion until the June 30th meeting.

Councilman Miller asked Mrs. Williams if the Council were to vacate this un-improved street, what hardship would this cause to her family, to which she explained that Mr. Dillon, who owns property next to her, wants to build a house to which Councilman Miller commented he was familiar with this situation, which goes back a while. Mrs. Williams explained that she and her family have taken care of this property for over 40 years and they feel that they should be able to claim this property, but stated property cannot be claimed if it is owned by the Government or as Mayor Cavanagh commented, through adverse possession.

Mayor Cavanagh asked that Mrs. Williams leave her file with Mrs. Varca and Mr. Margalotti will review the contents and we will table this until June 30 and on June 30 if Mrs. Williams wants to make an argument regarding this matter, she is welcome to attend that meeting as well and if Mr. Margalotti has any questions, he will contact Mrs. Williams directly.

Councilman Miller moved to table any further discussion on this street vacation ordinance until the meeting scheduled to be held on June 30, 1994. It was seconded by Councilman Clark.

The Clerk called the roll:

AYES: Councilpersons Clark, Filippone, Miller, Taylor & Wolfe.

NAYS: NONE.

ABSENT: Councilman McGee.

ABSTAIN: NONE.

Councilman Clark apologized for being late and then called for the introduction of a bond ordinance for various road improvements and asked the Clerk to read the proposed bond ordinance, by title only, as follows: **BOND ORDINANCE APPROPRIATING \$140,000. AND AUTHORIZING THE ISSUANCE OF \$133,000. BONDS OR NOTES OF THE BOROUGH FOR VARIOUS IMPROVEMENTS OR PURPOSES AUTHORIZED TO BE UNDERTAKEN BY THE BOROUGH OF OCEANPORT, IN THE COUNTY OF MONMOUTH, NEW JERSEY.**

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

The Clerk called the roll:

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

Councilman Clark then moved to hold the public hearing on this bond 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 Wolfe.

The Clerk called the roll:

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

Councilman Clark then called for the introduction of an ordinance regulating personal water craft and asked the Clerk to read the proposed ordinance by title only, 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.**

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

The Clerk called the roll:

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

Councilman Clark moved to hold the public hearing on this ordinance at the meeting scheduled to be held on June 30, 1994 and to advertise same in accordance with law. It was seconded by Councilman Taylor.

The Clerk called the roll:

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

Councilman Clark then asked the Clerk to read resolution **R-94-48** regarding senior citizen's tax deductions, after which he moved to approve same. It was seconded by Councilwoman Filippone and approved by Council.

Councilman Clark asked the Clerk to read resolution **R-94-49** regarding veteran's tax deductions, after which he moved to approve same. It was seconded by Councilman Taylor and approved by Council.

R-94-49

Councilman Clark reported that he has forwarded to each and every Department Head a memo outlining the required fixed assets accounting system, which is in accordance with the NJ Technical Accounting Directive, #85-2 and with this we will develop and install an accounting system for all Borough fixed assets. He continued that the inventory must be completed by September 15, 1994 and anyone who has any questions regarding this matter, should contact him directly.

COUNCILMAN MCGEE: ABSENT.

COUNCILWOMAN FILIPPONE: Councilwoman Filippone expressed her condolences to the family of Sam Teicher who recently passed away and was a long time businessman in Oceanport and a vital member of our community, even though he lived in Long Branch and we shall all miss him.

Councilwoman Filippone reported on the Captain's Report for the Oceanport First Aid Squad for the month of May and stated they received 42 calls, of which 27 were emergencies, 7 were motor vehicle accidents, 12 were mutual aid calls, 3 were fires and 5 other totaling 382 person hours and there were 17 advanced life support calls. She also advised that Captain John Long wanted everyone to know that the mutual aid calls for other towns has become a significant percentage of their calls.

Councilwoman Filippone reminded residents that the First Aid Squad has been trying to raise money to purchase two defibrillators and they have finally been successful and they will be purchasing two in the near future and will also be receiving \$2,500 from Prudential under a grant program they were involved with and the cost is \$4,000 and there is a 60-90 wait following the placement of the actual order.

Councilwoman Filippone mentioned that all of the Police in the State of NJ will be conducting a Special Olympics out at the fairgrounds in Trenton this weekend and two of our Police Officers will be carrying the torch for Oceanport and there will be five torches started in various locations of the State and Sgt. Harold Sutton and Patrolman Steve Cioffi will carry the torch for Oceanport and this is quite a nice experience. She also advised that anyone who wishes to make a donation to the Special Olympics, should forward the checks to them and they will send them all together to Trenton.

Councilwoman Filippone reported that the Oceanport First Aid Squad is in desperate need of wheelchairs and all of the ones they had have been loaned out as has much of their equipment and they are asking if residents no longer need the equipment, to please return anything they are no longer using.

Councilwoman Filippone advised that the new ambulance is due to be delivered to the Squad any day and they are looking forward to receiving it and are very appreciative of the support they have received from the Borough residents.

Councilwoman Filippone reminded the residents that the First Aid Squad will be mailing out their fund drive letters shortly and she urged everyone to give generously when you receive their request.

COUNCILMAN MILLER: Councilman Miller reported that the water sampling of our River is ongoing and on May 31 samples were taken from Branchport Creek to see what was happening and so far the numbers have been very good and the highest number was 300 colonies at the Casa Comida Bridge, which is just a little over the pollution number of 200, which is not really bad and it goes down to 2 at Wardell Circle, Sommers Park was 4 and at the Patten Ave. Bridge it was 13. He continued that on June 4 the Water Watch Committee went out and sampled the six sites contiguous to Oceanport and it was the first time in 3 years that all of the six sites gave a water quality index reading of good and the fecal coliform was zero at Blackberry Bay and Branchport and Troutman's Creeks and Sommers Park was 1, which were excellent readings.

Councilman Miller advised that the Monmouth County Board of Health started their sampling in the track at Turtle Mews Creek and this was just prior to the horses coming in on May 27 and except for several catch basins, which were off the scale, the rest of the sites were not that bad.

Councilman Miller reported that the Litterbug is actively going out now and Bill Stine will Chair our activities this summer and picked up quite a bit of submerged and floating debris, which was deposited at the ramp at Blackberry Bay Park.

Councilman Miller informed the public that the Water Watch Committee received a \$3,900 grant from the NY/NJ Harbor Estuary Program and will be used to purchase a lap top computer which will allow the Committee to prepare data and reports much easier and in a much more timely fashion.

COUNCILMAN TAYLOR: Councilman Taylor reminded the Borough residents that there will be a Clean Communities Clean Up Day on June 18, 1994 at 9:00 A.M. at Blackberry Bay Park and the Boy Scouts, Girl Scouts, Waterways and Water Watch Committees and any other interested volunteers are welcome.

Councilman Taylor reported that the Drug Alliance held their 2nd annual Poster Contest was held at the Wolfhill School and he offered his congratulations to Nicky Weiss, the 3rd Grade Winner and the 2nd grade winner was Whitney Waldman.

Councilman Taylor advised that the Monmouth County Department of Health inspected our recycling drop off center and commented that the site was clean and well maintained with no visible litter or odor and he offered his thanks to the residents for their continued recycling efforts, as well as to the employees in Public Works for their help with the site.

R-94-50 Councilman Taylor asked the Clerk to read resolution **R-94-50** awarding a three year garbage contract to Marpal Company, after which he moved to approve same. It was seconded by Councilman Clark and approved by Council.

COUNCILMAN WOLFE: Councilman Wolfe reported that he had an appointment last Thursday with Ms. Cross from the DEPE, Green Acres and Land/Water Conservation Supervision Trust Fund to inspect all properties that are owned by municipalities which used grant funds, to make sure the areas are being properly maintained under the requirements of the original grant applications. He

continued that the four locations that the Borough had used grant funds for are Blackberry Bay Park, Community Center, Evergreen Park and Old Wharf Park. He stated that all four locations were visited and the representatives from the State had the original maps dating back to the early seventies and they were very satisfied with the upkeep and maintenance of the parks and very impressed that a number of the parks had handicapped accessible playground equipment installed as well as the continuing expenditure of funds that the Borough has put forth to continually improve them and make additions to them as well. He also advised that a letter stating their satisfactory findings will be mailed to the Borough, for our files, once Ms. Cross has made her written report.

Councilman Wolfe reported that this past Tuesday he was invited to attend the New York Fire Chief's convention with Chief McOrmond, First Assistant Chief, John Gallo and Chief Engineer from the Hook & Ladder Fire House, Joe McGroarty and it was a very informative time, with hundreds of fire suppliers and spent approximately 6 hours going around to the various vendors finding out what the Borough's needs are and came back with some very good information for our Fire Department.

Councilman Wolfe asked the Clerk to read resolution **R-94-51** authorizing the submission of a DOT grant application for Seneca Place, after which he moved to approve same. It was seconded by Councilman Clark and approved by Council. R-94-51

Councilman Wolfe asked the Clerk to read resolution **R-94-52** authorizing the submission of a DOT grant application for Pocano Avenue, after which he moved to approve same. It was seconded by Councilwoman Filippone and approved by Council. R-94-52

Councilman Wolfe then asked the Clerk to read resolution **R-94-53** authorizing the submission of a DOT grant application for Tecumseh Avenue, after which he moved to approve same. It was seconded by Councilman Taylor and approved by Council. R-94-53

Councilman Wolfe stated that the DOT Trust Fund is set up to provide municipalities with additional assistance in paving, drainage and curb work and we have applied and received funds in the past for Bridgewaters Drive and East Main Street and we are hoping that we will receive one of the streets we have requested and we should hear something around October of this year.

MAYOR CAVANAGH: Mayor Cavanagh commented on the eminency of regionalization of many things having to do with Local Government and stated last Friday he spent the afternoon at Monmouth College at the Institute of Public Issues and conceptually it was called to deal with the urban/suburban corridor of development and it mostly centered around Long Branch and their re-development and the effect and role that would be played by surrounding communities, if any, and Senators Bennett and Palaia were there as well. He stated that it brings to mind that as time goes by here, we are going to be looking at more and more regionalization and there was a desire to merge the thinking of all the surrounding municipalities, as the Urban Enterprise Zone takes hold in Long Branch, what happens as a result of that and how everyone else will fit in and it was a most interesting experience.

Mayor Cavanagh stated on Saturday, he attend the Two Rivers Council of Mayors meeting and each week he becomes more and more convinced as you look around the County and see what is happening that we all are looking to try and regionalize as many concepts and areas that we can to try and save more money and become more efficient.

Mayor Cavanagh stated he also attended an Alternate Funding Meeting at Shore Regional High School, which is a committee set up by Shore Regional, in response to the question of Sea Bright's desire to withdraw from the school system, which led to a conceptual thought process of lets get all the towns together and see if we can think tank our way into doing something for the betterment of all.

Mayor Cavanagh commented that the Chief of Police asked him to make a public announcement that all Monmouth County Police Departments have agreed to participate in a Fireworks Amnesty Program in association with the Monmouth County Prosecutor's Office. He stated this will take place from June 17 through July 3 and the Chief's memo indicates that each year there are approximately 150 reported injuries caused by fireworks and two-thirds of all injury victims are under the age of 24 and 75% are male. He stated that fireworks are defined as cherry bombs, ash cans, roman candles, sky rockets, sparklers, etc. and the penalty for selling fireworks is up to \$7,500 in fines and/or jail sentences. Mayor Cavanagh stated that any of these items can be turned into the local Police Station and no questions will be asked during this time period.

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

PETITIONS FROM THE PUBLIC:

Barbara Silkworth, 29 Mohawk Avenue stated she was pleased to hear the introduction of the ordinance concerning personal water craft and asked if the ordinance has been drafted, and if so, are copies available, to which Mayor Cavanagh stated the answer to both was yes.

Mrs. Silkworth asked what the publication date is and if the ordinance will take effect immediately upon publication, to which Mayor Cavanagh stated that the ordinance will be adopted on June 30 and published within one week of the meeting and will take effect following the final publication. Mayor Cavanagh pointed out that we have scheduled the public hearing at a meeting which was not scheduled, in order to get this ordinance on the books rather than wait until the meeting in the middle of July.

Mayor Cavanagh asked when we will begin placing signs, to which the Borough Attorney stated he spoke with Chief Joyce about this matter and there has been some discussion about posting the signs in the appropriate locations prior to the final adoption date, in order to give the public some warning as to how they may be effected, although no summonses can be written until the ordinance is adopted and advertised.

Nancy Teddi, 33 Mohawk Avenue explained that she is the first house that you come to when you get off the launch ramp at Blackberry Bay Park and thanked everyone on the Council for their support of this ordinance and it has been dramatically better, but at the same time, she wanted to encourage the Mayor and Council to help them and speed the process along because she is being personally harassed now by the jet skiers, who now realize that she is the one calling the town to complain and there are profanities, drinking, etc. She continued there are contests going on in front of her home and she wanted to just thank everyone for the support of this ordinance.

Mayor Cavanagh stated that general procedure is that we usually do not discuss the ordinance until the adoption phase, however, as a result of some of the legal research as well as some of the wording contained in the ordinance, he wants her to go away tonight understanding

exactly what it says and not read something that she was not aware that was contained in the regulation. He asked the Borough Attorney to explain several of the issues which the Council had to wrestle with the other evening, so that everyone can understand what is happening.

Mr. Margalotti commented that copies of the ordinance are always available the night of the public hearing, but Mrs. Varca has the original ordinance and will make copies for anyone who requests same. Mr. Margalotti explained that the subject of the area of personal watercraft as defined by the State Statute was regulated by the State effective December, 1993. He continued that ordinance defines what we refer to in the Borough ordinance as personal watercraft and sets up certain criteria for what constitutes the type of watercraft that would be subject to the Statute and essentially a jet ski device would fit into the definition and it is distinguished from other types of power crafts in the sense that one of the criteria is that it is a jet water propelled device as opposed to a boat with either an inboard or outboard motor. He continued the Legislation did more than just give a definition to personal watercraft, but it also set up rules and regulations governing the operation of personal watercraft, and in doing so, the State has taken over jurisdiction to say that under certain conditions the operations of these personal watercraft are legal and how they can and must be operated and in so doing, they have precluded any municipality from outlawing them from waterways by saying that we don't want them in the waterways within our territorial limits or to impose more stringent regulations than the Statute itself imposes.

Mr. Margalotti went on to explain that the State has said what must be done and municipalities have no legal authority to do anything that would impose more severe restrictions on the operation of these crafts. He continued that the problem the Council was presented with, by the public was the operation of the jet skis in certain fashions that produced a nuisance to adjoining property owners and also, the fact that they were being launched in areas that were really not intended or designed for the launching of these craft and thereby, creating a nuisance to people who live near by. Mr. Margalotti stated that keeping in mind that because of the State preemption, the Borough has no jurisdiction to ban them from our waterways nor to impose any more stringent restrictions than the Statute already imposes, the Council did what it could and that was to prohibit the launching of these watercraft from inappropriate areas and the Borough through this ordinance, will have designated those inappropriate areas as any public street ending in the water and also any other public land with the exception of Blackberry Bay Park. Mr. Margalotti stated that essentially what the Council is doing is permitting the jet skis to be launched only from Blackberry Bay Park and stated that everyone must realize that the Borough cannot discriminate against jet skis under the State Statute.

Mr. Margalotti stated that the only facility that exists in the Borough that would be appropriate not only for the launching of the jet skis themselves, but for the vehicular traffic that is associated with them since most of the them are trailered in some fashion, the cars, trucks and trailers have to be left at the area where the jet skis are launched and the only facility that we have in the Borough that it would be appropriate and where it may safely be done, is Blackberry Bay Park. Mr. Margalotti went on to state that the Statute regulates the jet skis, once they are launched and states they can only be operated between sunrise and sunset and cannot be used after dark and other regulations include that they cannot be operated above idle speed within 50' of a bathing beach, any shoreline or any person who may be in the water. He stated there are also other regulations that prevent them from being used to jump wakes of other watercrafts and further stated there are defined responsibilities of persons who are operating the watercraft, including the type of equipment that they must have and how they must operate their craft in order to avoid the danger of collision with other craft that are lawfully using the water and it also requires the users to wear floatation devices.

Mr. Margalotti advised that the State has laid out a policy for the operation of these personal watercraft and no municipality may ban them, no municipality may impose greater restrictions and the enforcement of these laws, once the craft are in the water, becomes the responsibility of the law enforcement agencies, which would primarily be the Marine Police or in a situation where illegal activity is observed by our own Police, they have the right to issue summonses for the violation of the Statute, as would any law enforcement officer. He continued that the enactment of this ordinance gives our local Police an extra layer of enforcement authority, which is to keep them from being launched from other inappropriate areas by localizing or directing the launching facility to one area, it gives the Police the ability to possibly police the activity a bit more effectively. He stated there is just no legal way the Borough can ban them totally and the only thing that we can do is to restrict them to an appropriate area and make every possible effort to enforce the law that was passed by the State last year..

Mrs. Silkworth stated that since the Council has taken the option to present this to us this evening in advance, she feels that she would like to speak about this action. Mrs. Silkworth commented that her initial reaction is one of significant emotion about this issue and she cannot state to the Governing Body how unhappy, disappointed and angry she is with this situation, because what the Council has done, has taken the situation and put it back exactly where it was last summer, when 25 people signed a petition from both residents and users of Blackberry Bay addressing this issue. Mrs. Silkworth stated that while this will help out certain residents, and she certainly does not begrudge them the ability not to have to deal with this issue, but she felt that the Council is now, essentially giving license to anywhere from 1 to 13 people to come into Blackberry Bay and utilize that ramp.

Mrs. Silkworth stated that last September when she wrote the first letter, she had been in touch with Ms. Bambi Cross of Green Acres and she had assured her that there was no reason jet skis could not be prohibited from Blackberry Bay Park. She further explained that this situation is so annoying and so troublesome, night after night of listening to that constant drone, hour after hour, and she commented that the residents have tried not to complain, we have presented the Council with the situation a year ago to enable them to try and resolve this problem, because they were aware of what was going to happen this summer and it is already happening, and she felt that once people are told they cannot launch off the little beach at Seawaneka, they will be right back to Blackberry Bay Park, which is extremely disheartening and she knows that the residents involved are going to be more disturbed than they were a year ago and as a resident and tax payer, she does not find this to be an acceptable solution to the problem.

Mr. Margalotti stated that when Mrs. Silkworth says that by adopting this ordinance, we are giving license to this activity, it is just not correct because the Borough is not giving license to this activity, the State of New Jersey is giving license to this activity. He continued that if she is suggesting that the Borough has the authority to ban them completely from all of the waterways within the boundaries of Oceanport, whether it be Blackberry Bay or the Shrewsbury River, etc. it would be contrary to the law.

Mrs. Silkworth pointed out that she did not say to ban them from the waterways, but from launching them at Blackberry Bay, because if they can't launch them, they will not be there.

Mr. Margalotti asked where Mrs. Silkworth would have the launch from, to which she responded that she honestly did not care and felt that the residents should not have to be bothered

by that constant noise, nor should other residents be bothered by harassment and be spoken obscenities at because we object to this type of activity.

Mr. Margalotti stated that he agreed that no one should have to be subjected to that kind of conduct and behavior, but it does not answer nor solve the problem that it would be illegal for the Borough to totally outlaw jet ski activity or attempt to outlaw them by prohibiting them from launching from anywhere in the Borough. He stated that the law sanctions the operation of jet skis or personal watercraft and we have no right to impose, what can amount to being a total ban, on what is otherwise regarded by the State as a lawful activity throughout the Borough, by saying you cannot launch any place, from any public land or any public facility, because it would be contrary to the intent and spirit of the controlling Statute.

Mrs. Silkworth asked if the Borough was not banning the launching of jet skis from the ends of public streets, to which Mr. Margalotti stated what we are doing is regulating our own public lands, which we have a right to do, but we have to be careful of weighing the equities. He stated that the operator's of these personal watercraft, for as annoying as some of them might be and as annoying as the high pitched noise might be to the residents, when they are operating their craft consistently with the Statute, they are engaging in a lawful activity and you cannot do through the back door, what the law would not allow you do to through the front door and you cannot label it an illegal activity and attempt to prohibit the activity by saying that you cannot launch from any spot in the Borough, because that would be discriminatory and would violate the spirit of the controlling Statute. He stated the next best thing you can do is to try and regulate it in an intelligent fashion and that is what this ordinance hopes to accomplish.

Mrs. Silkworth stated that if they are told they cannot launch from the little beach and regulate it there, than it is a natural assumption that all of the people who are there, will now go over to launch at Blackberry Bay and asked if that is fair to the residents who live there, to which Mr. Margalotti stated that this is where the boat launching ramp is located and has been there for some 25 years.

Mrs. Silkworth pointed out that some of the houses located in that area have been there longer, but Mr. Margalotti explained that it is intended to be a vessel launching facility and it was built and designed that way and was funded for this purpose through the Federal Government and you cannot deny that this is the purpose of that facility. He stated the fact that there is a type of vessel, when improperly operated can create a nuisance, does not alter the fact that this is the only appropriate place in the Borough for launching any type of vessel.

Mrs. Silkworth commented that when the ramp was constructed, jet skis did not exist and were randomly used very seldom, and jet skis have come along after, but she does not understand why Ms. Cross of Green Acres was so specific and checked with her Supervisor and came back and said that they could be banned from Blackberry Bay Park.

Mayor Cavanagh asked when Mrs. Silkworth spoke with Ms. Cross, to which she thought it was some time late last year, and Mayor Cavanagh stated the State Statute was adopted by the Legislature effective December 23, 1993, and suggested if Mrs. Silkworth spoke with her any time prior to that date, she was correct.

Mrs. Teddi asked if the Council was saying that it is okay and acceptable to having the equivalent of having 50 motorcycles riding around in her front yard, non stop, from daylight to

daybreak, because that is when it starts and they were out there this evening, just before she came to this meeting.

Mayor Cavanagh stated that the Council has wrestled with this issue a number of times and wanted everyone to understand that there is no one up on the dais that is not interested in trying to provide you with the remedy you are looking for to resolve this problem. He continued that what has happened, unfortunately, is that people using jet skis, either by the number of them or by design, or collateral conduct, have been acting in a manner that is offensive either from noise, confrontation or the reasons Mrs. Silkworth has given. He stated that this Governing Body did not chose to draft the Statute that the State of New Jersey passed and signed into law and it was not our idea to make this an authorized use and up until December of 1993, what Mrs. Silkworth stated earlier was correct.

Mayor Cavanagh read the following statement from the State Statute: "the Governing Body of a County or Municipality shall not adopt or enforce any ordinance or resolution as appropriate relating to the operation of personal watercraft on the waters of this State which are inconsistent with the provisions of this Act, except as provided in another subsection. Any ordinance adopted by a Governing Body of a County or Municipality in violation of subsection A of this Statute shall be null and void". Mayor Cavanagh explained that what is happening is that the conduct associated with the problem, which is supposed to be controlled by the Marine Police since it is their jurisdiction and not ours, apparently have been unable to control the situation in a manner satisfactorily with what people consider reasonable, from what the residents have told him and they may be 100% correct, and each of the Councilpersons have been at one location or another, observing the problem and he is not unsympathetic to the problem they are experiencing, but there is a State Statute that he must abide by what it says, because he took an oath to up hold the law. He advised that if the law states that he is pre-empted and tells him he cannot do it, how can the Council do this and what the people are asking the Council to do is to remedy the conduct that comes from the authority that was given to them, and he does not want this to appear as a defense for them, but it is simply the law.

Mayor Cavanagh commented that this is a relatively new law and there are no cases to discuss, but there is a section in the Statute that essentially says that if you adopt an ordinance giving access, you have to do it equally and not just personal watercraft, but it must include power vessels, which are defined as boats. He raised the question that if we were to ban access to the river to personal watercraft, meaning jet skis at Blackberry Bay Park, which is both a State and Federally funded project set up to launch, would we not have to enter a similar ban from the Blackberry Bay Ramp for power vessels as well as personal watercraft, which would mean that under this Statute, we cannot give access to one and not the other, thereby banning boats with motors from using the ramp as well and if that is the answer under the present Statute, would we not be in a position where we would tell all the people with boats who come to the Blackberry Bay ramp, that they cannot have access to the river, together with the jet skis, and if this is the answer, how could we possibly, even if someone decided that what we did was consistent, how could this function.

Mrs. Teddi asked if it was not discriminatory to select only one spot for the jet skis to launch, which will mean they will all go to one area?

Mr. Margalotti stated that it is not discriminatory but is a controlled situation based on a rational approach to the problem, because you are in a sense directing that activity to the only area or facility in the Borough, which is equipped and was designed to accommodate that type of launching of water craft in general. Mr. Margalotti went on to explain that it is not discriminatory because the Borough is not discriminating between the people who live near Blackberry Bay versus

people who live near streets or other park areas and we are making a regulation based on a rational concept, in that we are trying to concentrate the activity in the only area that is built and equipped for that kind of activity. He went on to state that once they launch and are in the waterways, whether they came from Blackberry Bay launch ramp or some spot in another town and come over into Blackberry Bay, the Borough has no control over that beyond what the Statute has set up and the enforcement regulations that the State has designed, which the Borough has no control over and they cannot impose more strict regulations, we cannot ban the activity.

Mrs. Teddi asked how many launch areas were in the Borough, to which Mayor Cavanagh stated he was only aware of the launch ramp at Blackberry Bay Park, to which Mrs. Teddi stated that this means that all the jet skis are going to come to our spot and the problem is only going to get worse.

Mr. Margalotti questioned Mrs. Teddi as to which location she is speaking about when she says "our spot", to which she indicated Blackberry Bay Park. Mr. Margalotti stated even if we had the legal ability to ban them from every place in Oceanport, including Blackberry Bay Park, it will not keep the jet skis out of Blackberry Bay. Mr. Margalotti stated that he understood what Mrs. Teddi was saying, in that by giving them a facility, a launching ramp on Blackberry Bay and is that likely to increase the activity in Blackberry Bay, he stated that no intelligent person could dispute that, but that is beyond our control within the legal structure that the State has decided upon by the enactment of this Statute last December.

Mrs. Silkworth asked how can this then be banned from the end of Pocano at the little beach, to which Mr. Margalotti explained that first of all the Borough is not attempting to regulate the operation of the craft once they are in the water, which is beyond our jurisdiction to do so, but we do have the right to control and/or regulate what kinds of activities go on, on public land and any activity that is deemed to be inappropriate for the particular site or public land that is involved is within our ability to regulate and which we are attempting to do through this ordinance. He continued that why we don't do this at Blackberry Bay Park was explained earlier by the Mayor and stated the reasons are that it is a site that was designed for launching and the Statute that we are presently forced to operate under, says that you cannot discriminate between personal watercraft and other types of power vessels and although there are no cases construing the Statute yet, the Mayor is correct in his speculation that if you can't discriminate and you attempt to prohibit personal watercraft from Blackberry Bay as being the only facility in the area that is suitable for that activity, you may have to ban all boating activity from using that facility which would be contrary to the original intent of that site.

Mrs. Silkworth asked how could the jet skis be banned from the Point Pleasant Canal, which is listed in the Statute, to which Mayor Cavanagh stated it is because it is contained in the Statute and this is where the solution lies, with the Legislature.

Mrs. Silkworth asked if anyone has contacted Senator Kyrillos to see about amending this Legislation or to ask him what his intent was when this Legislation was drawn up, to which Mayor Cavanagh commented that unfortunately his personal intention would not be relevant and the Legislative history might be relevant, but his own personal thoughts are not.

Mayor Cavanagh stated that there is not a disagreement between the majority of the Borough Council and the residents who are here this evening about what might be desirable to do, but we must find a way to do this within the law. He continued that he is willing to speak with Ms. Cross

again and if she can convince the Mayor, that despite this Statute, that she will have the Attorney General assigned to the DEPE write the Mayor an opinion that says we can still ban the jet skis from launching at Blackberry Bay and list the reasons, he will be happy to bring this matter up to the Council and discuss it further.

Mrs. Silkworth asked if she could be included in the conversation with Ms. Cross, so they can both hear what she has to say about this issue, to which Mayor Cavanagh stated he will be in his office tomorrow and if Ms. Cross is available, Mrs. Silkworth is more than welcome to come to his office and he will have the call placed on a speaker phone and they can discuss this matter together.

Mayor Cavanagh commented that he is not binding anyone on the Council, because they are the ones who vote on matters, but if that position is taken, convincingly, because Mr. Margalotti cannot recommend that the law says one thing, but if someone asked us to do something else, he felt there would be hesitation on the part of the Council to do that, and he feels that is what we have at the present time. He felt that everyone agrees with the content here, but they are being told that the law requires something else and this has weighed somewhat on their minds.

Councilwoman Filippone stated that we instituted all of this because we were trying to help this situation and she stated she has lived on the river her entire life and she has been exposed to the jet skis, the Jersey Skiffs, the large cigarette boats, which she felt are far worse than the jet skis because they have to come through her area at a very low speed, which makes them sound even louder then when they are going at high speed.

Mayor Cavanagh compared this situation to one which took place last year concerning political signs and the majority of this Council saw no reason to allow the placement of the signs, but the law stated that it was allowed and could be regulated to a degree, but could not be banned and this Council had to vote to allow this, although they were not pleased with the outcome, but had to uphold the law. Mayor Cavanagh stated that he for one is not a political sign person, but he also informed the members of the Governing Body, that it was his considered opinion after reading the cases Mr. Margalotti referenced and the cases we were provided by the gentleman who came in to request this change, that the Council has no legal option other than to allow it and with restraint some of them voted quietly, but voted to do it because it was the law. He stated that he felt with this present issue, the sentiment of the Council may be different then the law, but unless we find an ability to work within the framework of the law, there is nothing that can be done and we have just had a similar experience with our Smart T ordinance regarding underaged drinking where we attempted to do something and the preemption doctrine came back and said you cannot do this and that was another item that everyone felt very strongly about.

Mrs. Silkworth stated that the comment was made this evening that Oceanport does not have jurisdiction over what goes on in the water, but it was her understanding from a meeting that she had previously with Councilman Miller and Chief Joyce that the local Police Department does have jurisdiction, but Mayor Cavanagh pointed out that what he said was that we don't have jurisdiction to decide what happens on the water and explained that we could not write an ordinance that jet skis cannot use the Shrewsbury River or Blackberry Bay Creek, because it would be void immediately and that is what he meant and other towns may have this type of ordinance on their books, but with the new Statute, he is not sure how they will handle that and it is not his problem.

George Katzenberger, 540 Seawaneka Ave. suggested that the regulations that were read apply to jet skis, but there are other regulations that apply to all watercraft, specifically No Wake

areas and you cannot make a wake within 300' of a dock or a moored boat. He continued that he would think that we would be able to get the Marine Police to put No Wake markers out there because if they cannot make wakes, they are not going to be interested in being in these areas, because it won't be any fun for the jet skiers.

Councilwoman Filippone stated once again she had to say that she lives on the river right down stream from a marina and there are some of the biggest boats she has seen on this river, and there are No Wakes signs, but it does nothing because they do not adhere to the signs.

Mr. Katzenberger stated that this regulation can be enforced by the Marine Police, but Councilwoman Filippone stated that is true, if you can get the Marine Police to respond, but they do not respond.

Mayor Cavanagh stated in answer to Mr. Katzenberger's question, if he is asking whether or not the Borough would be assisted in asking that these areas be marked in this way, he commented that Councilman Miller is advising him that we have already done this.

Councilman Miller stated we are on the list to receive two No Wake signs which will be posted at the mouth of Blackberry Bay and one near the ramp, but as he was told by the Marine Police, we are on the list, but their funds are low, and we are hoping to receive them this summer, but he did not feel confident that this may become a reality this year. He also stated that once they are posted, you still must have enforcement, which may be a problem.

Mr. Katzenberger stated that the local Police can enforce the No Wake regulations, if they observe this happening, to which Mr. Margalotti stated this was true, if the Police are able to apprehend the violators, to which Mr. Katzenberger commented that the trailers are left at the parking area. Mr. Margalotti stated that this is true only if it is a watercraft that launched at Blackberry Bay Park, but if it is a boat or jet ski from another town, who came into the Bay and is violating the law and then they take off, it would be very difficult to apprehend the violator.

Mr. Katzenberger felt that you would only have to enforce this regulation a couple of times and the word would get out and these kids on the jet skis would get tired of paying \$70 fines each time.

Mayor Cavanagh stated he has no problem with what Mr. Katzenberger is saying and the Chief of Police is in the audience this evening and he has spoken with him several times on this matter and has been informed by the Chief that he will cooperate with, participate together with the Marine Police and do whatever is appropriate to enforce, from his end, whatever he can. Mayor Cavanagh wanted everyone to understand that we are all on the same side and we are trying to do everything within the law to regulate the jet ski problem, which is unfairly and improperly burdening people who live on the river and commented that this is a policy statement of what we are doing here.

Mayor Cavanagh went on to say that we have drafted an ordinance as quickly as we could after the last meeting, we have tried before this having the Police do certain things and have spoken to the jet skiers, the Chief has had Officers at the sites where the problems exist and patrol and he wanted everyone to understand that we are not on the other side. He continued that the problem is that somebody got this Legislation passed in Trenton and it was not to restrict, but it is to encourage the use of jet skis and when you read the Statute, it is pro jet ski.

Mrs. Silkworth stated that she cannot believe that this was the intent of this Legislation from what she read about the publicity about this new Legislation last year because the people down in Ocean County were experiencing the same problems we are up here, as well as on the Navesink.

Elwood Baxter, 21 Pocano Ave. stated that while the Council is attempting to correct the situation, obviously militates in some of our favor, but we can see what is going to happen and they are all going to go back out to Blackberry Bay if they are allowed to continue to launch there. He has some knowledge about the launching ramp because he helped work on this project some 20 years ago and he remembers all the problems that they encountered because people came out in force to object to the ramp, because they did not want people coming from other towns to use the launching ramp at Blackberry Bay Park. He stated that he ignored that opposition at the time because he felt the launching ramp was a very good thing for the Borough and still does, but unfortunately at that time, he had not conceived of a device that sounded like some type of power saw and having not thought of this, the only reason that the State of NJ could have possibly passed Legislation as ridiculous as the present Statute, is because they have been gotten to by the jet ski lobby. He stated that jet skis are universally hated except by the people who operate the jet skis and the people who sell them and he felt that any marine State is suffering from this same problem.

Mr. Baxter asked what can we do, since this Statute has not had time to be tested in the Courts, to stop the jet ski use in Blackberry Bay since we technically own the land, but we were funded to build the facilities with Green Acres and Federal funds and those being the facts and the introduction of a new device, an infernal machine such as a jet ski, which is the most annoying thing that he can think of for people who live on or near the water, because people who live up the street from the river are also complaining about the noise, and no one has mentioned this evening the possibility of investigating a decibel count in order to control the noise, to which Mr. Margalotti stated we already have that in our noise control ordinance. Mr. Baxter asked if we already have a noise control ordinance and we have the capability of measuring the decibel count, how do we enforce that.

Mayor Cavanagh stated that apparently the Marine Police have decibel meters, but the questions is logically, we are trying to cure a problem by a remedy that is not intended to cure the problem and we are taking as a given, that the Marine Police will be unable to control the noise and unable to control the amount and activities of the people on the water, that they are supposed to control and now the residents are coming to the Council asking us to somehow circumvent what is already in place. Mayor Cavanagh stated as he said to Mrs. Silkworth, sentimentally and emotionally, we do not have an argument here, but there is an adherence to the law that we are required to make and if he can bring back to the Governing Body, assurances in writing, from the DEPE that can somehow square his reading of the Statute, from the assigned Attorney General, that we can do this and he would bring it back to the Council and he would be surprised if there was not support for this from this Body. Mayor Cavanagh explained that why we introduced this ordinance tonight was because if it helps someone to some degree, he wants to get it on the books and if it needs to be amended because something better happens, we will do this.

Mr. Baxter commented that this ordinance will help to some degree, but it is also going to hurt other people and while solving the problem for some, it is going to recreate the problem that existed previously.

Mayor Cavanagh explained that this is the reason he asked the Borough Attorney to discuss this matter this evening, rather than have everyone go home thinking one thing and then read that it is something different when it is published and he wanted to be fair to everyone.

Mr. Baxter stated that he wanted to address Councilman Miller's comments about the No Wake signs and that the possibility to receiving these was not too promising, asked if the State Marine Police would consider a proposition whereby some of us would volunteer to provide No Wake markers and allow us to put them in, to which Mayor Cavanagh felt we could always ask.

Councilwoman Filippone stated that many of her neighbors have signs they have made themselves on their docks.

Mr. Baxter stated he realized that they are violated constantly and he has owned a large boat and knows what it is to have to be slowed down, but he always knows what it is like to have your dock going all over the place when the boats go by, but the fact that the people do not obey the law does not make it right to not have the No Wake signs posted.

Mr. Baxter stated if the Marine Police does not have the funding available, why not allow us to make up the signs, since they are not that expensive to rig and Councilman Miller asked if he understood Mr. Baxter's suggestion that the people in that area of the community will provide the signs, to which Mr. Baxter stated that was correct.

Mayor Cavanagh stated he wanted to take this matter in order and stated he thought that Mr. Baxter's question is if they have the signs and not the manpower, can we put the signs up; if they don't have the signs or the manpower, can we do both, but preferably if they have the signs, we will provide the manpower to install them.

Councilwoman Filippone questioned that some of the No Wake signs have an ordinance number and asked if the ordinance number can be placed on these signs legally, because she has a home made No Wake sign, but if the ordinance number is put on it, it looks more official.

Councilman Miller stated he will contact the Marine Police tomorrow and find out what our options are and he will advise Mr. Baxter of his findings.

Mr. Baxter asked if we are going to have a Dog Warden in the Borough, to which Mayor Cavanagh answered yes and explained that we had a Dog Warden and went through a temporary period where we did not have that position filled, but he has spoken to the Chief about obtaining a badge and putting the Dog Warden back to work and there will be a meeting set up between the Chief, Dog Warden and the Police Committee to work out the details and he will be back on duty.

Mr. Baxter asked who the Dog Warden was going to be to which Mayor Cavanagh stated it is the same gentleman who did it last time, since no one else has applied for the position, and that is Mr. Sal Lagrotteria.

Councilwoman Filippone stated the Board of Health had decided that they did not want to continue the position of Dog Warden, some time ago, and now we had to poll the members of the Board of Health to make sure everyone was in favor of reinstating this position and they were all in unanimous agreement to replace this position.

Ward Coles, 555 Port-au-Peck Avenue asked why we could not place two large poles up near the park, at the water's edge, and they could be osprey nests and the property would become a bird sanctuary and he believed there was a State regulation about making noise in bird sanctuaries.

Mayor Cavanagh thanked Mr. Coles for his suggestion, but stated he would like to wait until he hears from Ms. Cross with regard to the new regulations and what can and cannot be done.

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

Councilman Clark moved to approve the bills as listed on the Voucher Register dated June 16, 1994. It was seconded by Councilman Taylor and unanimously approved by Council. TOTAL 1993 VOUCHERS PAID THIS MEETING \$7,695.66. TOTAL 1994 VOUCHERS \$71,681.41. TOTAL 1994 VOUCHERS PAID THIS MEETING \$68,964.73. TOTAL 1994 OPERATING FUND \$140,646.14. TOTAL PUBLIC ASSISTANCE I ACCT. \$500.00. TOTAL PUBLIC ASSISTANCE II ACCT. \$350.00. TOTAL CAPITAL ACCOUNT \$369,475.00. TOTAL RECREATION TRUST ACCOUNT \$1,250.00. TOTAL GENERAL LEDGER-TAX OVERPAYMENT \$2,989.38. (SEE VOUCHER REGISTER)

At 9:40 P.M. Councilwoman Filippone moved to adjourn this meeting until the next regular meeting scheduled to be held on June 30, 1994 at 8:00 P.M. It was seconded by Councilman Clark and unanimously approved by Council.

Respectfully submitted,



PATRICIA L. VARCA
BOROUGH CLERK