

**MINUTES OF A REGULAR MEETING HELD MONDAY, FEBRUARY 5, 2007**

**MINUTES OF A SPECIAL MEETING OF THE  
MAYOR AND COUNCIL  
HELD MONDAY - FEBRUARY 5, 2007**

The meeting was called to order by Mayor McPherson at 7:04 p.m. with the following Councilmembers present:

Councilman Frazier  
Councilman Fecanin  
Councilwoman Keyes  
Councilman Sommer arrived at 7:05 p.m.  
Councilman Genovesi

Councilman Reyes - absent

Mayor McPherson asked those present to join her in a salute to the flag followed by a moment of silent prayer.

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Council Vice-President Keyes read the provisions of the Open Public Meetings Law.

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Council Vice-President Keyes opened the hearing of citizens, as no one wished to speak, the hearing of the citizens was closed.

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For **FINANCE**, under the consent agenda, Councilman Frazier moved the following Resolution, seconded by Councilman Fecanin with all members present voting aye:

**RESOLVED:** That bills in the amount of \$11,652,211.81 for Current Account Bills, all as detailed on the attached sheets be passed for payment, warrants drawn and charged to the proper accounts. A complete list of these bills is on file with the Borough Clerk.

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For **PUBLIC WORKS**, Councilman Fecanin requested the Borough Attorney explain the dedication of roadways. The Borough Attorney said that there are two separate matters but they are both dedication of roadway. The Borough Attorney said that in reference to Highland Cross, the Borough is obtaining a new part of the existing roadway which has been reconfigured and extended. She said it goes from Route 17 Highland Cross, comes down and meets the BCUA pumping station. She said that there is a turning of the land that is being added to the roadway, which is coming into the title of the Borough of Rutherford through Linque Highland Cross Partners, the Redeveloper who constructed the DPW garage. The Borough Attorney said that she expects the ordinance to be on for first reading at either the February 20 or February 27 meeting. She said that Highland Cross has produced the metes and bounds description and it is being reviewed by Ralph Tango and any discrepancies are being worked-out.

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The Borough Attorney stated that the second dedication of roadway is Feronia Way, which is by the developer, Boiling Springs who built the project on Orient and Feronia and reconfigured that roadway and they are now ready to do the dedication, which she expects to be by a resolution at the February 20 or February 27 meeting. She said they are still waiting for an actual plan survey from them, but they have submitted the metes and bounds description. The Borough Attorney said this is the standard way of dedication under State Statute when land is given to the Borough with a metes and bounds survey, the Borough Engineer then signs off on the document and it get enacted by either resolution or an ordinance.

Under President of the Council, Councilwoman Keyes requested the Borough Attorney to speak in reference to the purchase of the lots near the Route 3 bridge. The Borough Attorney said in reference to her memo and as previously discussed in closed session, as a matter of negotiation which are now complete, she requested an approval of the settlement with New Jersey DOT for purchase of two small parcels of land with the purchase price of \$3,000 to the Borough. She said that the Council will recall that the initial offer was \$500 and after discussions with the negotiator for the DOT, they have been able to obtain the \$3,000. The Borough Attorney stated that if the land had been developable lands on a roadway she might have had the Council authorize an appraisal, but they are located on the river bank and are tiny parcels of land not developable. She said therefore the value of such is significantly nil. The Borough Attorney explained that the DOT is willing to pay the \$3,000 because they want to move their objectives forward and it is less property for the Borough to have to maintain with the title being transferred to them. She passed out copies of the contract for the Council to review.

The Borough Attorney stated that she is seeking approval of the \$3,000 settlement for the sale of the land and authorization for the Mayor and Clerk to sign the sale agreement. She said that in the referenced memo it is stated that this does not absolve the Borough of any responsibility for environmental remediation, however, a preliminary investigation indicates that there is no contamination on the parcel and the Borough has never taken an active role in contamination at the site and this sale will not effect our obligation. The Borough Attorney said when in title, anyone could sue for the next 100 years because you are in title and they could theoretically sue for environmental contamination.

Councilman Sommer asked if there is a definition of environmental contamination. The Borough Attorney said that there is a provision in this contact, which is the normal state contract provision. She stated that she has reviewed the document and it is in accordance with various statutes that already exists and that anyone in the chain of title could be held a responsible party. The Borough Attorney said if there is contamination from a particular piece of land, the mere fact that you transfer the title does not absolve you of liability. She stated she didn't remake the wheel on the provisions of the contract because for \$3,000 it probably would not be worth the attorney's fees. Councilman Sommer said that because it is an isolated property, he would like to get a sense of the magnitude, if any, of the potential liability of going to an extreme if someone dumped oil there ten years later, that to him would fall under the statute as a hazard. The Borough Attorney said that the property is on the river and it is highly unlikely that this small parcel of land could be determined to be the contaminating source for bigger contamination. She said the river bed fronts many properties and there are a lot of outstanding environmental lawsuits regarding the Passaic River and various entities and this is just a tiny part in the overall environmental outlook, remediation that all of the state agencies and municipality has had to make up what happened over 40 years ago.

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Councilman Genovesi asked for clarification if it was stated that there was a brief overview which showed no contamination. The Borough Attorney said that they gave her an offer based upon the appraisal and they indicated that there is no contamination at site, this doesn't mean that they are willing to indemnify the Borough. Councilman Sommer said that in Section 1B it states that the Borough has no knowledge of any contamination and it is not an "as is" disposition. The Borough Attorney said that with respect to what is within our control, a person passing by who dumps oil on the property is not necessarily in our control; however, there could be an argument made that the property should have been fenced off. Councilman Genovesi asked that we would be subject to that whether the land was sold or not, we would still be at risk. The Borough Attorney stated that any entity or person entitled to land that is found to be contaminated is at risk to be determined a responsible party, which doesn't mean you are held responsible for remediation it really means you are a target under Federal and State environmental laws to get at companies that contaminated for years and go through owners and operators of landfills and business that didn't care about how they polluted the land and those provisions responsible parties in the change of title are meant to be so that those entities from all the previous years can be held responsible.

Councilman Fecanin made a motion to accept \$3,000 from the DOT for the two parcels with the Mayor signing the agreement, seconded by Councilman Sommer with all members present voting aye.

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For **POLICE**, Councilman Frazier advised of the renewal of animal control services contract for 2007 to Tyco Animal Control. After discussion it was agreed to hold item to next meeting for further discussion.

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Councilwoman Keyes moved the following Resolution, seconded by Councilman Fecanin with all members present voting aye.

**WHEREAS**, the "Open Public Meetings Act" requires that a public body adopt a resolution at an open meeting before going into closed session to discuss a matter which excludes the public as permitted under Section 7b:

**NOW, THEREFORE, BE IT RESOLVED**, that the Mayor and Council will hold a closed meeting on Monday, February 5, 2007 at 7:21 p.m. in the Committee of the Whole to discuss personnel in the Police Department and pending and/or anticipated litigation and;

**BE IT FURTHER RESOLVED**, that the outcome of this discussion as to litigation will be disclosed when there is no further need for confidentiality and confidential personnel matters will continue to be protected; personnel information that is able to be disclosed will be so disclosed when there is no further need for confidentiality.

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Councilwoman Keyes re-opened the meeting to the public at 8:25 p.m.

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Councilman Frazier made a motion to authorize the issuance of the final notice of disciplinary charges with respect to Sergeant Nicholas Loizzi and a finding that all charges have been sustained and instituting the final penalty of termination of employment of Sergeant Loizzi and appropriate filing of all papers, therefore, retroactive to July 26, 2005 when the charges were filed, seconded by Councilman Fecanin with all members present voting aye with the exception of Councilman Genovesi who abstained.

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Councilman Fecanin moved to adjourn at 8:29 p.m., seconded by Councilman Frazier with all members present voting aye.

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Borough Clerk