

MINUTES

TUESDAY, AUGUST 21, 2012; Regular Meeting of the Borough Council of the Borough of Lodi, New Jersey; TIME: 6:00 P.M.

CALL TO ORDER

Mayor Schrieks called meeting to order.

OPEN PUBLIC MEETING NOTICE READ BY Borough Clerk.
NOTICE OF THIS MEETING WAS MADE BY THE BOROUGH CLERK BY PAID LEGAL ADVERTISING ON NOVEMBER 28, 2011 IN THE RECORD NEWSPAPER.

THIS MEETING IS BEING TAPE RECORDED.

PLEDGE OF ALLEGIANCE

ROLL CALL:

PRESENT: (5) CW Cima, CW Licata, CW Fiduccia, Deputy Mayor Schrieks, Mayor Masopust.

ALSO PRESENT: Municipal Manager Tony Luna, Borough Attorney Alan P. Spiniello, Borough Auditor Frank R. DiMaria, Thomas Solfaro, Borough Engineer, and Police Captain John Scimeca.

CERTIFICATES AND AWARDS

APPROVAL OF MINUTES OF PREVIOUS MEETINGS

July 1, 2012

July 17, 2012

CM Masopust stated on the July 1st minutes, number 2 resolutions amending the motion to state that he had made the motion.

MOTION: CM Masopust, second CW Fiduccia to approve.

Ayes: (5) CW Fiduccia, CW Licata, CM Masopust, Deputy Mayor Cima, Mayor Schrieks.

COMMUNICATIONS

Received and Filed.

REPORT OF THE MANAGER

Municipal Manager reported that the smoke test that is being done in the community is progressing very well.

RESOLUTIONS

Executive Meeting: Tuesday, September 11, 2012; 6 P.M.

Regular Meeting: Tuesday, September 18, 2012; 7 P.M.

CONSENT AGENDA (These resolutions are matters covering operation of government and will be passed by one roll call vote covering all items on the consent agenda.)

1. Resolution No. 12-127 approving bills for August 2012.
2. Resolution No. 12-128 authorizing to refund overpayment of taxes due to a County Board Judgment.

- 3. Resolution No. 12-129 appointing Geoffrey Santini, Certified Animal Control Officer and holder of New Jersey State Animal Cruelty Investigator's Certification of Bergen County Animal Enforcement Inc., as Animal Control Officer for the Borough of Lodi for the period of June 13, 2012 through June 12, 2013.
- 4. Resolution No. 12-130 approving Settlement of Tax Appeal.
- 5. Resolution No. 12-131 approving Settlement of Tax Appeal.
- 6. Resolution No. 12-132 approving Settlement of Tax Appeal.
- 7. Resolution No. 12-133 approving Settlement of Tax Appeal.
- 8. Resolution No. 12-134 approving Settlement of Tax Appeal.
- 9. Resolution No. 12-135 approving Settlement of Tax Appeal.
- 10. Resolution No. 12-136 approving Settlement of Tax Appeal.
- 11. Resolution No. 12-137 approving Settlement of Tax Appeal.
- 12. Resolution No. 12-138 re-appointing Robert Marra as Commissioner of the Housing Authority of the Borough of Lodi term ending June 10, 2017.
- 13. Resolution No. 12-139 awarding bid contract to Reggio Construction for project known as CDBG Road Improvements Program 2011 Miscellaneous Roads in the amount of \$257,503.12 for Borig Place, Hamilton Avenue, McGuire Place and \$87,503.05 for Alternate A River Street for a grand total of \$345,006.17.
- 14. Resolution No. 12-140 appointing Borough Manager as Acting Municipal Treasurer without additional compensation.
 MOTION: CM Masopust, second Deputy Mayor Cima to approve numbers 1 through 14 by consent.
 Ayes: (5) CW Fiduccia, CW Licata, CM Masopust, Deputy Mayor Cima, Mayor Schrieks.

(B) RESOLUTIONS

ORDINANCES

Introduction; Ordinance No. 2012-03; An Ordinance to amend Ordinance No. 192-1; An Ordinance creating and establishing the Administrative Code of the Borough of Lodi, County of Bergen, State of New Jersey, in accordance with the form of government known as the Municipal Manager Form of Government Law pursuant to N.J.S.A.40:79-1, et. seq.
MOTION: CM Masopust, second CW Fiduccia to approve.
Ayes: (5) CW Fiduccia, CW Licata, CM Masopust, Deputy Mayor Cima, Mayor Schrieks.

Introduction; Ordinance No. 2012-04; An Ordinance to amend Ordinance No. 73-16, An Ordinance prohibiting the consumption of Alcoholic beverages in public and other places and providing penalties for the violation thereof.
MOTION: CW Fiduccia, second Deputy Mayor Cima to approve.
Ayes: (5) CW Fiduccia, CW Licata, CM Masopust, Deputy Mayor Cima, Mayor Schrieks.

Introduction; Ordinance No. 2012-08; An Ordinance to amend Ordinance No. 808-31; An Ordinance to provide for the licensing of businesses engaged in the sale of vehicles and to provide regulations for the operation of said businesses also known as Ordinance No. 808-31.

MOTION: CW Licata, second CM Masopust to approve.

Ayes: CW Fiduccia, CW Licata, CM Masopust, Deputy Mayor Cima, Mayor Schrieks.

MAYOR AND COUNCIL REPORTS

MAYOR SCHRIEKS

Mayor Schrieks reported that CW Licata and he were presented at the Lodi Boys & Girls Club Annual Torch Run which starts their Olympics and perspective summer camp program. All the children that participated in the Lodi Boys & Girls Club have participated in this Torch Run for a very long time and it is a great commemorative competition between the kids. It was a very nice event and a very nice crowd for the Lodi Boys & Girls Club.

OLD BUSINESS

NEW BUSINESS

HEARING OF CITIZENS

1. **Glenn Russo, Sr., 20 First Street, Lodi, New Jersey** stated that we have had numerous water main breaks. Finally last year Passaic Valley Water replaced the piping. The residents had come to the Mayor and Council meeting with a petition to get the curbs and street repaved. We did get the curbs this past November; however the street is in deplorable condition as far as driving, walking. It is a safety issue and asked for an update on Bernice Place. Mayor stated after his conversation with Mr. Russo the other day, he contacted the county Administrator trying to find out when our 2012 CD allocation award letter was coming. He assured the Mayor it was either Wednesday or Thursday afternoon that the letters are coming from the County. They need to be approved by the County Executive and sent forward. The Mayor stated we can't necessarily go out to bid without money secured and in place for an item like that. Bernice Place is part of the 2012 CD applications. Mayor stated that in July the governing body secured \$250,000. On a bond referendum to do various roads and sidewalks in Lodi. What we are doing in the interim of getting that letter we are proceeding with going out for bid for those various streets to get them paved. The bids will be received and opened on September 7th and we will award the bid hopefully on the 11th or 18th of September and have the work started. He told Mr. Russo that he will see streets around him, River Street and a couple of other streets being done, but that is with 2011 money, which we just got the certification.

Mr. Russo also mentioned to the governing body that on the Sunday before, he believes it was August 12th, during the day a home was burglarized. Last year there was another home on First Street also burglarized. Our neighborhood has a lot of senior citizens. Mr. Russo stated that he is not blaming anyone, but it is time our Lodi Police Department start to have a foot patrol on First Street, Bernice Place, River Street and specifically Memorial park. Mr. Russo was talking about the back of Bernice Place. There is an element that is coming into the town hanging out at the park all hours of the night. He asked if that could be something that could be discussed. He asked Mr. Luna if he could take the lead on that and speak to Chief Caruso as far as that issue is concerned to get some foot patrol in the evening. Mr. Luna stated he will speak with the Deputy Police Chief.

The last issue that was brought up by Mr. Russo was the painting of curbs. He stated that he has been waiting for about 6 years for the curbs to be painted by 26 and 20 First Street. He asked if that can be done in the next week or two before Labor Day.

2. **Fire Chief Darren Yuhas, Lodi Fire Department;** stated that a couple of months back, around April, the three other fire chiefs and himself sat down with the governing body about the problem with alcohol in the fire houses. We gave the governing body a revised set of laws that the Fire Department wanted to go by and the governing body stated they would get back to us. That never happened. Yesterday morning, Chief Yuhas stated that he got called in the office and he got ordinance No. 2012-04. He would like to know why they were not talked to about this ordinance before yesterday.
- Mayor** stated that he thinks their policies are not right or not wrong. Nobody is saying that. It comes to a level of protection to the Borough and if you are looking to put blame on somebody as far as not coming back to you, square it with me. I will take that responsibility. I think what we are doing here with this ordinance is protecting the department, protecting the residents, and most importantly protecting the Borough. So I will take the blame for not getting back to you guys, but at the end of the day what we're doing here is protecting all the members, all the residents and the Borough's name in reputation. That is first and foremost above everything as far as the Mayor is concerned.
- Chief Yuhas** stated that he understands that continued to say that the Members of the Lodi Fire Department dedicate themselves and protect this community every day. One or two things they would like to keep tradition in and that is one of them. It seems every time the governing body gets together, it is not to help us.
- Mayor** stated that he is sorry that the Chief feels that was because he doesn't believe that is any goal of any person up here on the dais. The Mayor stated he has nothing but the highest goal for each and every one of the Members of the Fire Department. Mayor stated that he has family members who have worn that uniform just as much as you have with the same pride and admiration that they wore that uniform. Mayor stated he doesn't think that anyone of us would ever come in harm's way to try and hinder your ability to do your job. Mayor stated he has said numerous amounts of times that we owe a debt of gratitude to all our men and women in uniforms who take care of this Borough. Mayor Schrieks has said this publically, privately. One of the things that every Chief the Mayor has been in contact with in the 12 years that he has been here has been that he tells it like it is. He doesn't sugar coat anything, he doesn't beat around the bush, he tells you what he thinks and he stated he thinks you are getting a fair conversation that he thinks is necessary in regard to this ordinance. Mayor stated that they gave copies to the Fire Chiefs. Mayor stated that the governing body has a work session on September 11th. He told Chief Yuhas to let us know if you are attending the meeting and we will carve out time. We will all discuss it like we are suppose to. Mayor told Chief Yuhas that he brought up some valid points in the conversation yesterday that needs to be addressed. Things we may have forgotten and things we didn't think of, so that is why the ordinance is in place to start to have a conversation, a jump off point.
- Chief Yuhas** asked if the Mayor and Council are going to work with them in the things we have a problem with.
- Mayor** replied yes and stated he believes the word is compromise. A compromise on both levels. At the end of the day, the integrity of what we are trying to accomplish has to be maintained.
- Chief Yuhas** mentioned there are some issues and we just feel we were kept out of the loop.
- Mayor** replied to Chief Yuhas to put the blame on him. The Mayor is a leadership position. Something wasn't taken care of and something wasn't communicated. Mayor Schrieks stated he takes full responsibility for it.

3. **Ryan Curioni - 76 Liberty Street, Lodi;** Mr. Curioni's first question involves the Board of Education elections. Mr. Curioni stated he was present at the February Mayor and Council meeting in which Mrs. Zito suggested that you move the Board of Education Elections to November (General Election) to save tax dollars. As of April of this year 87% of school boards statewide had moved their election to November and over 2/3 of Bergen County districts had done. Also you would have a larger voter turnout and you would save tax dollars. Six months have passed since this was brought up at a public council meeting. You had plenty of time to study it. If you refuse to move the election, you at the very least owe the people of Lodi an explanation here tonight. Being 87% of school boards had moved their elections, and this board has chosen not to, he asked each of the 5 council members to give him their explanation why they would not, to save tax dollars, to insure a larger voter turn- out. He stated last school board election in April, it had the lowest turn-out ever. That is terrible for a community. Mr. Curioni stated last week we had new high school ratings and they were disastrous. Mr. Curioni stated you shouldn't try to maintain the status quo with our current situation and being 87% of towns and most of them were decided by the council. They weren't decided by the Board of Education, they were done by their city council. They had the vision to move it to November to save tax dollars and to have a larger voter turn- out which you should all want with the current crises in our school system. So, I am asking all five members here tonight why you have not moved the April school election to November.

CM Masopust replied If, I may, honestly I do have that here on the work session and it is my fault when I was the Mayor that I never really pushed it on the agenda. I have the same article you have, Mr. Curioni, where it shows the same figures. I apologize for not scheduling it on a work session for the governing body to discuss.

Mr. Curioni stated most towns have done it already, so there was plenty of time to study it. All of you, being of civic minded people should have an idea of where you would stand on it today. Do you support it or don't you support it?

Mayor Schrieks replied, naturally, Mr. Curioni, we would have to discuss it at a work session.

Mr. Curioni replied it is not a new issue.

Mayor replied, I am not saying it is a new issue. As the former Mayor has just explained to you, it has not been brought up at a work session to discuss.

Mr. Curioni asked, what is your personal opinion. Do you support it?

Mayor replied I would assume I would have no problem supporting it, if it worked out for our community. It is an option that the law was created for communities that the Board of Education could opt in or opt out of it.

Mr. Curioni asked why haven't you done it so far.

Mayor replied, because we have not had a discussion on it.

Mr. Curioni replied I understand you want to look into it. I am just saying you reached a point where towns already did it. 87% did it already and you are saying you want to discuss it. Don't you have an opinion, don't you have an idea?

Mayor replied the options have to be discussed.

Mr. Curioni replied that the perception is you want to maintain the status quo with our schools. It is almost like you want to protect. The last school election was a disgrace with what went on. At the voting booths was a disgrace. A lot of you packed it in. It was uncontested. A lot of you were challengers in an uncontested race, the lowest turn- out ever, telling people to pass the budget. You looked at those results, you loved them and you are going to maintained them.

Mayor replied that he didn't know anyone up here on the dais that was a challenger.

Mr. Curioni replied Mrs. Licata was a challenger.

Mayor replied that Mrs. Licata is a teacher. We were not challengers, so let me correct that.

Mr. Curioni stated that it was a circus like atmosphere, lowest turn-out ever which saw a budget with 4.3/4% increase, largest monetary increase in the county get passed through with nobody caring. Nobody having any idea of what was going on and it is a sad, sad case for Lodi. You should all be embarrassed that you had such a small turn out with nobody involved. You should do everything in your power to say we are going to move the election to November. We are going to have a larger voter turnout. We are going to have people coming out for Presidential race, Governor's race and they are actually going to be deciding on children's education, something that should be the most important thing in a community.

CM Masopust stated, "Mayor, if you would to cover up for my error schedule this issue on the next work session."

Mayor replied, "Sure I have no problem with that." The Mayor stated he was under the impression it was the Board of Education that has to make the decision, but he just asked the Borough attorney who informed him that it is an option that the governing body has the right to decide also.

Mr. Curioni stated that either or can decide, or it can be decided by a referendum. He stated that Bogota's council moved it and the school board said they didn't want it moved and they moved it anyway because the council had complete right to move it.

Mayor replied, Ok, we will talk about it.

Mr. Curioni's second item had to do with jobs.

Mr. Curioni stated, if you want to hire or promote family members or invent new titles for family and friends, you should do it in the light of day. If you give your manager the order to hire without resolution, the public still has the right to know.

He asked, will you agree tonight to start disclosing this public information at your public meeting going forward?

Mayor wanted to know what hiring is he talking about.

Mr. Curioni stated that if you hire or promote as with other towns, it appears in their minutes and on the internet.

Mayor stated that it is personnel. He doesn't know how it could be on the internet.

Mr. Curioni replied, personnel is open records and everyone else is doing it.

Mayor stated that after it is voted on, yes and after they have been hired.

Mr. Curioni asked, so once you hire or promote people shouldn't the public have the right to know in the year 2012?

Mayor stated that if we hire someone, it would be on our minutes after the conversation.

Mr. Curioni stated you hired people this year and they haven't been on the minutes.

Borough Attorney stated that it is only in the minutes if it is discussed at a public council meeting.

Mr. Curioni asked so if you are hiring people, where is it?

Borough Attorney stated it is all public information in the Borough Manager's office. Records are available once a person is hired. Mr. Spiniello asked Mr. Curioni if he has ever heard of an OPRA Request.

Mr. Spiniello stated, in every meeting not all hires are discussed. Like tonight, we aren't discussing what people may have been hired. That information is available at any time.

Mr. Curioni replied that in the year 2012, people should be able to go on the internet for that information.

It is more cost effective if the public information is available on the internet. Other towns do it at public meetings, Board of Education meetings posted their minutes and it showed who they hired at that meeting. It has been going on for 10 years in other communities and in Lodi you have to go and request something in person.

Borough Attorney replied, Mr. Curioni, you are making statements about other communities. If it is discussed in a meeting, it is in the minutes and those minutes are posted and available. If it is not discussed in a meeting, an example it could be a part-time D.P.W. worker is hired for the summer. Sometimes it is done by the manager, but those records are available. People request and see them all the time.

Mr. Curioni stated that he is quite aware of that.

Mr. Curioni replied, I am telling you in this day and age, it is 2012; maybe you should be discussing hires in the public so when someone comes once a month at the public meeting they will know who is being hired and what is going on. It shouldn't be where someone has to take time out of their day and now with the summer hours 8am to 3pm and they have to request something. They have to wait a certain amount of time and I don't know if you are still charging. If you have it available on the internet and it is out there, this is something you should be embracing. There is technology today, which is more cost effective and more convenient.

The third item Mr. Curioni brought up had to do with the Pension Law.

Mr. Curioni stated he had looked at a public notice in July. It showed you awarded a no-bid contract to Marcel Wurms, Esquire. Legislation passed in 2007 bars contracted professionals from being enrolled in the State Pension Program. You also invented the title of Special Council in which you made the person in question a salaried employee of Lodi and enrolled him in the State Pension Program. His own job description for the salaried position pays over \$70,000.00 per year to provide legal services. He advertises that he currently runs his law practice on weekdays from 9am to 6pm and Saturdays from 9am to 2pm, all indicators show that he is a contracted professional and by definition can't be a borough employee. Why is he enrolled in a pension program and receiving benefits and have you contacted the pension board about this matter?

Mr. Curioni asked isn't this a case in Lodi where you have a contracted professional receiving benefits?

Borough Attorney replied, well we could respond to that. Matthew Boxer is the State Collector for the State of New Jersey. He did an analysis on pensions for professionals that may or may not be permitted to be in the pension program. The article was by the state auditor's office, the day before the Boxer's report. (Boxer's Report- July 18th) At our very next work session which was last week, I referred the matter to our Labor Law Counsel, Andrew Kingsley for determination as to whether or not an individual should be removed from the program. So this matter has already been taken care of last week. We already referred it to Andrew Kingsley to make a determination. There is a series of questions as to how long they have been in the pension program, when they were put in, whether they are an employee, whether an independent contractor, under the IRS rules. There is a series of questions that have to be answered and then that is sent to the Department of Personnel. We have already been in contact with the State Controller's Office and referred it to Labor Law Counsel. They are working on it. We expect by the next meeting there will be a determination. So, it is something we are already aware of.

Mayor stated, first of all, it is \$65,000.00 not \$70,000.00.

CM Masopust stated we have already asked Mr. Kingsley to look into all our employees.

Borough Attorney stated, but the problem is we can't just make a determination on our own and remove someone from a pension program. They have what we call due process rights. They have to get notice, an opportunity to be heard, someone has to give their version on it, whether they were grandfathered in, whether there is some other entitlement. For instance that person is also been a part-time emergency management coordinator and has been in the pension program many years ago. So we cannot just revoke a person. So we have referred this matter to our Labor Law Counsel and we are on top of it.

CM Masopust once again stated that we have asked our Labor Law Counsel to look into all the employees.

Borough Attorney stated, yes we went above that. Not only professionals with the Boxer Report, all part-time employees, to see whether or not there was anyone in the program who may or may not be entitled.

Mr. Spiniello stated that law you are referring to was passed in 2007 and what happened was most towns were of the opinion that people were grandfathered in and it is only since the Boxer report came out on July 18, 2012 that is now been brought to light in many towns and most of it has been abused by Borough Attorneys. He stated that he has been a Borough Attorney since 1989 in River Edge and that he has never been in the pension program, so he is not involved in this matter at all. But we are looking into it and by next month we should have a determination or at least a report back into the pension board. He also remarked that Lodi is one of the few towns and that he spoke with Mr. McNire, State Controller's Office, and we are one of the few towns that have been taking the initiative on our own. We are not being compelled to do so. We have not been audited and we are not even on the audit list. But we are taking it pro-actively before someone does audit us.

Mr. Curioni replied, but we are 5 years late.

Borough Attorney replied we are not 5 years late. Towns were under the impression they were grandfathered in. Mr. Curioni, you are referring to an article that consists of 2 pages long. The Boxer Report is a 40 page report which Mr. Spiniello has and is also available on-line, so if you want, read it. Mr. Curioni replied, Ok, I am glad that the pension board is looking into it.

The other question Mr. Curioni had:

Mr. Curioni asked why somebody is providing legal services, a contracted employee and a salary employee.

Borough Attorney replied here's the thing, the person you are referring to is basically providing tax appeal services and grant money. The manner in which he is paid. There are many ways you can pay a professional. You could pay him under the salary ordinance. You can pay him by voucher. That is just a manner in which you are paying. It doesn't mean he is an employee.

Mr. Curioni asked if the person is receiving benefits.

Borough Attorney answered, no.

Mr. Curioni asked is the Special legal Counsel receiving health benefits.

Borough Attorney answered, no.

Mr. Curioni stated the title you created as salaried employee, Special Borough counsel was created in 2007.

Borough Attorney stated, Mr. Curioni, let me correct you. Special Counsel has existed years back. I believe Mr. Anthony Savastano held that title at one time. This Borough Council in the interest of saving money in the budget has a Borough Attorney, Special Counsel and Tax Appeal Attorney. What this Borough Council did in order to save \$50,000.00 per year has eliminated one of those 3 positions. The Special Counsel is now doing the tax appeals, special counsel work and the bond or grant work. So they eliminated the position of tax Appeal Attorney, combined it with Special Counsel for a savings of \$50,000.00 per year.

Mr. Curioni asked so what was this no bid contract for in July?
What duties was that for?

Borough Attorney stated, I just told you. First of all it was called a RFQ (Request for Qualifications) and how that works is: first the Borough publishes a notice for all positions. Professionals send in their qualifications to do work in the community. We had sent out RFQ that we were looking for an attorney to do tax appeals. Grant work as well as any special cases that may be assigned. His position as this special legal counsel which now includes tax appeals is made under the salary ordinance and the Borough has the right to pay him under the salary ordinance or by voucher.

4. **Frank Bienwiec – 26 Long Valley Road, Lodi** – thanked the governing body and the D.P.W. for taking care of the property in regard to mosquitoes. He also spoke about moving the school board election to November and agrees the election should be moved to November.

5. **Virginia Zito – 35 Avenue D, Lodi** – spoke about the tonnage report processed from National Transfer. **Municipal Manager** told Mrs. Zito to call Marian in the morning because she handles the tonnage reports. Mrs. Zito also spoke about the stench that is coming from the loaded trailers. Mrs. Zito also gave her opinion about the school board election being moved to November. She also agrees that the election should be moved.

6. **Mr. Archie Dowson – 272 Church Street, Lodi** – spoke about the paving of the streets in Lodi. **Mayor Schrieks** and **Borough Engineer** spoke about the matter. **Mr. Dowson** also mentioned about the fire hydrants not being flushed. It was told to Mr. Dowson that Passaic Valley Water is in charge of that.

7. **Maria Freeze – 106 Liberty Street, Lodi** – spoke about the intersection between Washington Street and Prospect Street in regard to speeding. She stated there is a speeding problem on Prospect Street. She stated a few years an electronic speed sign was put there. She asked if maybe they could put the sign there once again. **Police Captain Scimeca** stated he had put the sign there the last time and right now the electronic speed sign was just put in place on Terrace Avenue. The sign on Terrace Avenue will be there for two weeks and after that time he will put it on Prospect Street.

ADJOURNMENT

MOTION: CW Licata, second CW Fiduccia to adjourn.

Ayes: (5) CW Fiduccia, CW Licata, CM Masopust, Deputy Mayor Cima, Mayor Schrieks.

TIME: 8:00 P.M.

| | AYE | NAY | ABSTAINED | ABSENT |
|----------------|-----|-----|-----------|--------|
| 5 P. FIDUCCIA | ✓ | | | |
| P. LICATA | ✓ | | | |
| m B. MASOPUST | ✓ | | | |
| L. CIMA | | | | ✓ |
| MAYOR SCHRIEKS | ✓ | | | |

THIS IS TO CERTIFY THAT THIS IS A TRUE COPY AS ADOPTED BY THE BOROUGH COUNCIL OF THE BOROUGH OF LODI, N.J. AT A MEETING HELD

ON _____
 BORO CLERK Robert A. Licata