

**LAKESWOOD TOWNSHIP COMMITTEE
MINUTES
MEETING OF: APRIL 12, 2007**

The Lakewood Township Committee held a Meeting on Thursday, April 12, 2007 in the Lakewood Municipal Building at 6:30 PM for the Executive Session and 7:30 PM for the Public Meeting, with the following present:

Mayor.....	Raymond Coles
Deputy Mayor.....	Meir Lichtenstein
Committee Members.....Absent.....	Senator Robert Singer Menashe Miller Charles Cunliffe
Municipal Manager.....	Frank Edwards
Municipal Attorney.....	Steven Secare
Municipal Clerk.....	Bernadette Standowski

CLOSED SESSION

**Motion by Mr. Cunliffe, second by Mr. Miller.
Resolution No. 2007-113 – Adopted.**

SALUTE TO THE FLAG AND PRAYER

Adequate notice of this meeting has been provided in accordance with the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-6, by Resolution of the Township Committee adopted January 1, 2007 and published in the Ocean County Observer on January 10, 2007.

ROLL CALL

OPEN SESSION

Motion by Mr. Cunliffe, second by Mr. Miller, and carried, to open the meeting.

MOTION TO APPROVE MINUTES OF: 3/15/07

**Motion by Mr. Cunliffe, second by Deputy Mayor Lichtenstein, and carried, to approve the above Minutes.
Minutes approved.**

MOTION TO APPROVE CLOSED SESSION MINUTES: 3/15/07

**Motion by Mr. Cunliffe, second by Deputy Mayor Lichtenstein, and carried, to approve the above Closed Session Minutes.
Closed Session Minutes approved.**

PRESENTATIONS: Brotherhood Essay Contest Winners

Mayoral Certificates were presented to the winners of the Brotherhood Essay Contest Winners.

ORDINANCES FOR DISCUSSION: None

Mayor Coles advised that this will be Deputy Clerk Jodi Pellicano's final meeting, as she is leaving for a new job as Boro Clerk in Ocean Gate, and wished her the best luck in her new position.

COMMENTS FROM THE PUBLIC will be heard for a limit of one (1) hour. Each speaker will have four (4) minutes and shall be limited to one time at the Podium.

Mayor Coles opened the meeting to the public.

Rita Jume, 135 Avis Avenue – Complained that neighbors built a house on property without a variance and without a Certificate of Occupancy. This house was built well above her home, and there are bright lights shining into her home, disturbing her sleep and privacy.

Mr. Secare advised there are no Ordinances prohibiting or limiting the lighting situation.

Mayor Coles asked that Mrs. Jume please leave her address and telephone number and he will contact Mr. Mack, the Zoning Officer, to set up a meeting regarding her complaints.

Mr. Secare advised Mrs. Jume that he received her complaints and they have been noted and forwarded to the appropriate agencies within the Township. The complaints refer to building department issues.

Felicia Terrilli, 208A Huntington Drive – Presented correspondence to the Township Committee with regard to Charlie Brown's handicap parking, which is not safe for handicapped people, because they have to walk behind parked cars from the back of the building.

Mayor Coles advised he was made aware of this problem, and he has already contacted the Manager of Charlie Brown's, and Mr. Mack sent him a letter yesterday requesting a meeting to discuss the issues.

Mr. Secare will research the issue as to enforcement of the laws.

Mr. Cunliffe asked that a copy of the letter from Mr. Mack also be sent to Charlie Brown's corporate offices.

Henny Bauman, 115 Tenth Street – Commented with regard to tax assessments and tax appeals and counter appeals.

Noreen Gill, 192 Coventry Drive – Commented with regard to a fence on Spruce Street which she feels is a safety hazard.

Mayor Coles advised he has already spoken with Ed Mack with regard to this matter.

Meir Hertz, 210 Miller Road – Commented with regard to tax appeals and counter appeals.

Gerry Ballwanz, Governors Road – Commented with regard to tax appeals and counter appeals.

Seeing no one else wishing to be heard, Mayor Coles closed the Meeting to the public.

CONSENT AGENDA

The below listed items are considered to be routine by the Township of Lakewood and will be enacted by one motion. There will be no formal discussion of these items. If discussion is desired, this item will be removed from the Consent Agenda and will be considered separately.

1. Resolution releasing a performance bond posted by Symcha Realty Co. LLC in connection with Block 51 Lots 1 and 9.
Resolution No. 2007-114
2. Resolution appointing members to the Lakewood Township Heritage Commission.
Resolution No. 2007-115
3. Resolution awarding a contract to Gavan General Contracting, Inc. for the reconstruction of the paddleball court facility at Pine Park, sum not to exceed \$145,277.00.
Resolution No. 2007-116
4. Resolution authorizing a Leave of Absence to Doreen Adorno for the time period of April 8, 2007 through October 3, 2008.
Resolution No. 2007-117
5. Resolution authorizing a Leave of Absence to Elijah Yarborough for the time period of May 1, 2007 through May 21, 2007.
Resolution No. 2007-118
6. Resolution authorizing the execution of a Collective Bargaining Agreement with AFSCME Local 3790.
Deputy Mayor Lichtenstein removed from the Consent Agenda.
7. Resolution accepting bids on Block 129 Lot 21 as the result of a private land sale.
Resolution No. 2007-119

8. Resolution establishing traffic regulations in connection with the July 4th Fireworks to be conducted at Lake Carasaljo.
Resolution No. 2007-120
9. Resolution authorizing the execution of a third lease amendment agreement with American Baseball Company, LLC.
Resolution No. 2007-121
10. Resolution authorizing the execution of a revised traffic signal agreement with the County of Ocean for the intersection of Central Avenue and Sunset Road.
Resolution No. 2007-122
11. Resolution recognizing April 2007 as Autism Awareness Month.
Resolution No. 2007-123
12. Resolution declaring April 15 through April 21, 2007 as National Library Week.
Resolution No. 2007-124
13. Resolution proclaiming April 15 through April 21, 2007 as National Volunteer Week.
Resolution No. 2007-125
14. Resolution declaring April 2007 as Child Abuse prevention Month.
Resolution No. 2007-126
15. Resolution authorizing a Leave of Absence to Julie Payne for the time period of April 30, 2007 through October 30, 2007.
Resolution No. 2007-127
16. Resolution authorizing the issuance of one Class C Plenary Retail Consumption Liquor License to the highest qualified bidder at a public Sale.
Resolution No. 2007-128
17. Resolution accepting bids on Block 815 Lot 7 and Block 816 Lot 3 as the result of a private land sale.
Resolution No. 2007-129

Motion by Mr. Cunliffe, second by Mr. Miller, to approve Resolution Nos. 1 through 5 and 7 through 17 on the Consent Agenda.

On Roll Call – Affirmative: Mr. Miller, Mr. Cunliffe, Deputy Mayor Lichtenstein and Mayor Coles.

Resolution Nos. 2007-114 through 2007-129 – Adopted.

Resolution 6 that was removed from the Consent Agenda was discussed and acted upon as follows:

6. Resolution authorizing the execution of a Collective Bargaining Agreement with AFSCME Local 3790.

Motion by Deputy Mayor Lichtenstein, second by Mr. Miller, for purpose of discussion. Deputy Mayor Lichtenstein advised he plans on voting for this Resolution, however, he is doing so with a little confusion. This is a collective bargaining agreement that the Township has with the people who work in town hall, who all do a very good job. He has been on the Committee for the past four years, and he is beginning to grasp more than he did four years ago. As they continue to bargain, and they continue to give good health benefits, and longer pensions, these are issues that affect the town. There were some issues in this particular agreement, and he does not wish to get into that at this time, but he thinks it would have made very little of a difference to a lot of the employees in town hall, but could have saved the town some significant money. However, this is the lower pay scale in town hall and he does not feel it would be right to necessarily start with the people who are possibly on the lower end of the pay scale. But rather to wait for the Township to bargain with a unit that is on the higher end of the pay scale, to see if that made sense. The reason he is saying I this is not to bore everyone, but because he wanted to go on record, because when they do come to bargaining agreements in the future, they do not have one union saying they did it for the other unions. He is voting for it because of the people they are voting for, and wanted to go on record as saying that he may not agree with the bargaining agreements in the future.

Mr. Cunliffe advised he is of the same mind as Deputy Mayor Lichtenstein, but he intends not to support this Resolution. He wanted to state for the record that Mr. Edwards did a fantastic job with this contract, and all the work he put into it is much appreciated. He feels bad that he is not going to support this, because these are the people who are on the lower end of the pay scale at the Township, but he thinks they have to start somewhere. Without going into the details of the contract, there are things he is not happy about. As to certain increases, they are going to have to start looking at holding back. If they don't start sometime, as painful as it is, when do you start? He does not want to be in a position with the next union, where they are giving increases that the Township can not afford. He is not saying that the people do not do a good job, but as a Township, the Committee has to respond to the voters needs. They are getting signals out of Trenton, that they want a cap on spending, and they have to take a look at benefits, insurance, and the increases. He compares them to the type of increases that he is aware of in the private sector, and most people he knows in the private sector are either getting no raise, or a very small raise. They are getting a percent or two, if they are lucky. In municipal work, a lot of times unions are getting three, three and a half, four, four and a half percent, and that is not what is going on in the private sector. Again, he means nothing against Mr. Edwards, he did a fantastic job, and nothing against the union, but he intends not to support this.

As to the Motion by Deputy Mayor Lichtenstein, second by Mr. Miller:

On Roll Call – Affirmative: Mr. Miller, Deputy Mayor Lichtenstein and Mayor Coles.
Negative: Mr. Cunliffe

Resolution No. 2007-130 – Adopted.

ORDINANCES SECOND READING

- **An Ordinance of the Township of Lakewood, County of Ocean, State of New Jersey, amending an Ordinance canceling taxes as to Block 48 Lot 10.**

Read by title only for second reading.

Mr. Secare advised this is the Ordinance that he made a mistake on, and Mr. Simons correctly pointed out that it should have been an amendment, which is now an amendment which would repeal the year of 2006, and its only effective for 2005. The Ordinance has been corrected.

Mayor Coles opened the meeting to the public.

Larry Simons – On March 15th of this year, he raised a question at the Township Committee Meeting regarding the cancellation of taxes for Chevrah Lomdei Torah, Block 48, Lot 10, for the year 2006. The granting of the tax exemption for this particular Block and Lot had been voted upon and passed by the Township Committee by Ordinance No. 2007-9 on February 15th, 2007. Mr. Secare responded that he had spoken with Mr. Michael Caccavelli, who had been hired by the Township for special appeals and that Mr. Caccavelli agrees with him, Mr. Secare, that 2005 can be subject to cancellation, but that 2006 can not be subject to cancellation. In addition Mr. Secare stated that he is an expert in the field. Mr. Secare also advised that he had provided a legal opinion to the Committee that it was an acceptable cause to grant this tax exemption. His understanding that at the March 15th meeting was, and still is, that only the Lakewood Township Assessor has the authority granted by the State of New Jersey, to reinstate a tax exemption. He asked under what authorization does the Township Committee have to reinstate a tax exemption. He disagreed with Mr. Secare's advice to the Township Committee. Under his March 18th OPRA request, he as a copy of a letter from Mr. Caccavelli, to Mr. Secare, which states in part that they respectfully submit that it is beyond Lakewood Township's statutory authority to utilize the provisions of NJSA 54:4-3.6c, to cancel any taxes on the subject property when there is pending litigation regarding whether the property in question should have been tax exempt. Furthermore, nothing contained in NJSA 54:4-3.6c permits a municipality to declare the property tax exempt under NJSA 54:4-3.6c. Municipalities do not have the unilateral authority to grant tax exemption to properties where the Municipal Tax Assessor has determined that the property is taxable. The taxability of properties lies exclusively with the Municipal Tax Assessor, and the Assessor's determination is independent of local control. The last sentence of Mr. Caccavelli's letter dated March 5, 2007 to Mr. Secare reads that Lakewood Township's actions are void _____ under the statutory tax scheme of the State. They may constitute an illegal act and have the potential to expose Lakewood Township to additional litigation from other less fortunate tax payers in Lakewood Township. Based upon Mr. Secare's March 14th comments, regarding Mr. Caccavelli being an expert in the field, he again raises the question, under what authorization does the Township Committee have to reinstate a tax exemption. He also suggested that the Township Committee consider a Motion to void, not amend, Ordinance No. 2007-9, since that Ordinance, in his opinion, is illegal. The vote of the Township Committee this evening, will be forwarded to the State taxing authority, the NJ Attorney General, and any other authorities he deems to advise.

Mr. Secare stated there are two issues in Mr. Caccavelli's letter that are relevant. The first is with regard to doing anything with any appeal, or anything that is litigation, and that is the reason that he points out that the 2006 cancellation of taxes, and that is the second issue he will discuss shortly, was not permissible. And that is why they did the amendment, to eliminate 2006. It happened to be a typographical error on his part, but his letter addressed the fact there was litigation pending in the 2006 exemption. That issue aside, the nuance here is that it is not an exemption, it is a cancellation of taxes. He agrees with Mr. Caccavelli's assessment that this governing body can not grant an exemption under certain circumstances, but the statute he quotes in the Ordinance is for a cancellation of taxes, and not an exemption. He is certainly willing to defend that position, and he believes he will be successful in defending any attack that may be launched against this Ordinance.

Seeing no one else wishing to be heard, the hearing on this Ordinance was closed to the public.

Motion by Deputy Mayor Lichtenstein, second by Mr. Miller.

Mr. Cunliffe advised that as it stands right now, he does not think he can support this Ordinance, not for any of the reasons brought up by Mr. Simons, but reading the body of the Ordinance, and he means no disrespect to the Attorney, but he does not see anything in the body of the Ordinance that really amends or makes null and void any previous actions of the Township Committee, and he is concerned about that. His issue is not the typographical error. The title says it is an amendment, but there is nothing in the body that says that it is amending anything. And there is nothing in the body that says it is making anything previously null and void. It doesn't even call out the previous Ordinance that was voted on incorrectly. So he intends to vote no.

Mr. Secare explained that the strike-through on the year 2006 is intended to do that, but it might have been more artfully drafted, and he does not disagree with that. But if you want to put it in the body that Ordinance No. 2007-9 is hereby amended to read as follows, that would be perfectly acceptable.

Deputy Mayor Lichtenstein amended his Motion to include that this Ordinance will say it amends the previous Ordinance for 2006 taxes, and only addresses the taxes for 2005.

Mr. Miller also amended his second to the Motion.

Mr. Secare apologized, and it is a point well taken. He also believes that the verbiage should be changed to say that the Ordinance number is hereby amended to read as follows.

Mr. Cunliffe asked if the Committee would consider carrying this Ordinance to the next meeting so they can see it in writing.

Deputy Mayor Lichtenstein answered he made the Motion, and is personally comfortable voting on the Ordinance this evening.

Mayor Coles added that he respectfully requests that it be carried to the next meeting. He would rather have a unanimous vote.

Deputy Mayor Lichtenstein and Mr. Miller agreed to amend the Motion to carry the Ordinance to the meeting of April 26th.

On Roll Call – Affirmative: Mr. Miller, Mr. Cunliffe, Deputy Mayor Lichtenstein and Mayor Coles.

Mr. Cunliffe asked Mr. Secare if they could have a response in writing as to Mr. Caccavelli's letter as back-up to the Ordinance, so he can review that also.

Second reading and public hearing on Ordinance No. 2007-16 carried to the meeting of April 26, 2007.

• **An Ordinance of the Township of Lakewood, County of Ocean, State of New Jersey, amending and supplementing Chapter XI of the Code of the Township of Lakewood entitled "Traffic"** (One Way East Harvard St. westerly from East End St. and East End. Ave.)

Read by title only for second reading.

Mayor Coles opened the meeting to the public. Seeing no one wishing to be heard, the hearing on this Ordinance was closed to the public.

The above Ordinance was offered by Mr. Cunliffe, second by Mr. Miller.

On Roll Call – Affirmative: Mr. Miller, Mr. Cunliffe, Deputy Mayor Lichtenstein and Mayor Coles.

Ordinance No. 2007-17 adopted on second reading.

• **An Ordinance of the Township of Lakewood, County of Ocean, State of New Jersey, authorizing the exchange of certain lands within the Township of Lakewood, in particular, the Township of Lakewood to acquire Block 809 Lot 9, Block 818 Lot 2, Block 819 Lot 3 and Block 831 Lot 5, and to convey Block 1098 Lot 2 and Block 1099 Lot 4, as part of an exchange of lands pursuant to N.J.S.A. 40A:12-16.**

(Spruce St., Towers St., Read St.,) (Gates, Powell, Fulton)

Read by title only for second reading.

Mayor Coles opened the meeting to the public.

Gerry Ballwanz – Advised that she noticed in the language that there would be a Court appointed Appraiser. She asked who is going to pay for the appraiser.

Mr. Edwards answered that in the past, the other party is responsible for the appraisal.

Mrs. Ballwanz confirmed that the appraisals would be done after the adoption of this Ordinance.

Also, under Section 5, the Township owned land is assessed for \$487,000, and the private land is assessed at \$369,000, and the way it is written the Township would be getting \$118,000 if the assessments go through at this level. It sounds like a good deal for the Township. Then, if you go to Section 6 where it says that the private land is more than the Township land, but according to the Ordinance it is less, and there would be no extra cash given to the private owner by the Township. So here is where the Township really gets a valuable deal. When she did a search on this, she found that those four parcels do not equal \$369,000, but they equal \$960,000, over \$500,000 more than what is stated in the Ordinance. She checked it on the internet with the Ocean County Tax Board, and when added up, she found it to be greater than \$369,000. She called the Lakewood Township Assessor, and the office said those are the figures. Her question is why in this Ordinance do they see \$369,000, when all of the four parcels owned by the Gross Foundation actually are assessed at \$960,000. Who, how and why was this error made.

Mayor Coles explained this is for the affordable housing. It was challenged in Court, and was deemed acceptable since affordable housing is a public purpose, and they could go forward with the exchange of lands. The Court specified that they wanted an appraiser to come in even though the Township just had the revaluation, and the Township was provided with a list of several appraisers who as long as they were hired, and came up with numbers, the Court would accept the numbers as valid and they could go ahead, and the lawsuit would have no merit.

Mrs. Ballwanz asked why does the Ordinance say \$369,000. She feels that this Ordinance needs to be tabled, and that has to be verified.

Mr. Cunliffe stated it would be to the Township's benefit to move forward on this. Especially if the Court ordered it, and the Judge named a set of appraisers. He would go along with what Judge Serpentelli said.

Mrs. Ballwanz asked who came up with these numbers, that do not equal \$960,000. How did they evaluate each parcel.

Mayor Coles asked what is the method for coming up with these numbers.

Mr. Secare answered that he gets the numbers from the Assessor's Office; he just plugs the numbers in, he does not make up the numbers.

Mr. Edwards also stated the numbers are from the Assessor's Office; he does not know if Mrs. Ballwanz has the right numbers, or if the Ordinance has the wrong numbers. This property was involved with exchanges for quite some time now, unless, they are talking about numbers prior to the reval, and numbers after the reval. He does not know for sure which one is right without verifying it with the Assessor.

Mr. Cunliffe added that could be a very good explanation as to what happened. This matter has been before Judge Serpentelli, and they have a list of appraisers to use, and even if Mrs. Ballwanz is correct, Section 6 protects the Township from losing money. He would be satisfied with them double checking the numbers, just to see what the value is. But he thinks they can still go ahead to get the affordable housing going, because he does not see any harm to the Township.

Mrs. Ballwanz stated she thinks that the one lot that the Township wishes to exchange, Block 1099, Lot 4, is separated from the wetlands by a paper street. The Master Plan indicates that the Township should evaluate the Kettle Creek area as open space, that one lot would be probably better appropriated and used as part of Kettle Creek open space. So she objects to that parcel being transferred.

Mr. Secare advised that the numbers that they just checked are in agreement with the Ordinance, so they may be pre-reval, but ultimately whatever the appraiser says is going to govern. There is no real harm in passing this Ordinance this evening.

Mr. Edwards added that he has property print-outs for each piece of property from the Assessor's Office, for the four lots and the amounts total \$369,000. So whether or not these are figures prior to the reval, or post, this matter has been ongoing for a long time pending the Court hearing.

Mr. Secare added that it is irrelevant because whatever the appraiser says is going to govern.

Seeing no one else wishing to be heard, the hearing on this Ordinance was closed to the public.

The above Ordinance was offered by Mr. Cunliffe, second by Deputy Mayor Lichtenstein.

On Roll Call – Affirmative: Mr. Miller, Mr. Cunliffe, Deputy Mayor Lichtenstein and Mayor Coles.

Ordinance No. 2007-18 adopted on second reading.

• An Ordinance of the Township of Lakewood, County of Ocean, State of New Jersey authorizing the sale of Block 448 Lot 3; Block 466 Lot 3; Block 467 Lot 6 and Block 477 Lot 11, in the Township of Lakewood, at a Private sale pursuant to N.J.S.A. 40A:12-1, et seq.

(Claremont St. & Beaver St.)

Read by title only for second reading.

Mayor Coles opened the meeting to the public.

Gerry Ballwanz – Objects to the sale of this land because this is part of the parcel in the triangle of Cross Street, Massachusetts Avenue and Prospect Street, that the senior citizens, and the Planning Board, with their Master Plan review, said there should be an analysis of that tract of land that is owned by the Township, to try to create parks and open space.

Mr. Cunliffe advised that he is looking at the proposed rezoning map, and unless the map is incorrect, it shows this property being designated as R-20/R-12 cluster.

Sam Christopher, 514 Central Avenue – Asked how much land is involved here.

Mayor Coles answered he does not think that it even totals an acre. These are all undersized parcels.

Mr. Edwards advised that the total square footage of the four lots totals equals 40,000 square feet, which is approximately 3,000 less than an acre, and are only bid on by contiguous property owners, and they are undersized lots.

Noreen Gill, 192 Coventry Drive – Advised she attended all of the meetings. There was to be a study on this matter.

Seeing no one else wishing to be heard, the hearing on this Ordinance was closed to the public.

Ordinance No. 2007-19 died due to lack of Motion.

• **An Ordinance of the Township of Lakewood, County of Ocean, State of New Jersey, authorizing the private sale by deed of Block 268 Lot 1 for nominal consideration to Hatzolah EMS pursuant to and in accordance with N.J.S.A. 40A:12-13.4, et seq. (Royal Ct.)**

Read by title only for second reading.

Mayor Coles opened the meeting to the public.

Sam Christopher, 514 Central Avenue – Asked what is the size of this property.

Mayor Coles answered it is .147 acres, which is 6,405.64 square feet. This information is part of the Ordinance and the property description is attached to the Ordinance.

Seeing no one else wishing to be heard, the hearing on this Ordinance was closed to the public.

The above Ordinance was offered by Deputy Mayor Lichtenstein, second by Mr. Miller.

On Roll Call – Affirmative: Mr. Miller, Mr. Cunliffe, Deputy Mayor Lichtenstein and Mayor Coles.

Ordinance No. 2007-20 adopted on second reading.

CORRESPONDENCE

Letter from William Rieker, CFO, regarding notes sold and price obtained.

Letter from Grand Lodge Knights of Pythias asking to use the Township Auditorium on May 12, 2007 for their annual poster contest.

Letter from Bethel Spanish Pentecostal Church requesting to use Town Square on May 2, 9, 16, 23 and 30, 2007 for worship services.

Letter from Cornerstone Calvary chapel requesting to use Town Square on May 12 and May 26, 2007 from 12:00 Noon until 4:00 PM to pass out free food and clothing.

Letter from Church of Grace and Peace requesting to use Town Square on May 19, 2007 from 4:00 PM through 8:00 PM.

Motion by Mr. Cunliffe, second by Mr. Miller, and carried, to approve the above correspondence.

PARKS AND EVENTS CORRESPONDENCE

Per schedule of fourteen (14) items attached hereto and made a part hereof.

Motion by Mr. Cunliffe, second by Mr. Miller, and carried, to approve the above picnic requests.

MOTION TO APPROVE BILL LIST OF: 4/10/07

Motion by Mr. Cunliffe, second by Mr. Miller, to approve the above Bill List.

On Roll Call – Affirmative: Mr. Miller, Mr. Cunliffe, Deputy Mayor Lichtenstein and Mayor Coles.

COMMENTS FROM COMMITTEE MEMBERS

Mr. Cunliffe advised that he received a letter from Mr. John Kovak, who is requesting to be named to the Transportation Board. He sent the letter to the Chairman and Secretary of the Board, and if he does not receive a negative response from them, he would like him appointed to the Transportation Board.

The Committee wished Jodi Pellicano the best of luck in her new position.

ADJOURNMENT

Motion by Mr. Cunliffe, second by Deputy Mayor Lichtenstein, and carried, to adjourn the meeting.

Meeting adjourned.