

April 19, 2011
Keyport, New Jersey

Minutes of the Regular Meeting of the Mayor and Council, Borough of Keyport, held on the above date in the Borough Hall Council Chambers, Keyport, N.J., pursuant to the adoption of the Annual Notice on file with the Borough Clerk, forwarded to the Asbury Park Press, Independent, Two River Times and Newark Star Ledger and posted on the Bulletin Board in accordance with the Open Public Meeting Act, P.L. 1975, Ch. 231.

Mayor McLeod called the meeting to order at 7PM. and Borough Clerk read the Sunshine Law Notice.

ROLL CALL

On Roll Call the following were present: Councilmembers Bolte, Sefcik, Chamberlain, Sheridan, Ambrose, Toglia, Mayor McLeod. Others present: Borough Administrator Ms. Wright, John T. Lane, Borough Attorney, CFO Thomas Fallon

PLEDGE OF ALLEGIANCE/MOMENT OF SILENCE

CONSENT AGENDA

(All resolutions listed hereunder are considered to be routine in nature and will be enacted in one motion. Any person may request that an item be removed for separate consideration.)

R106-11 Authorizing Approval of Monmouth County Mosquito Extermination Commission to Apply Pesticides from Aircraft to Control Mosquito over Portions of the Borough of Keyport

R128-11 Payment of Bills

R129-11 Authorizing Bid for Firemen's Park Boardwalk Repair

R130-11 Accepting T & M Proposal for Tax Map Update Services

PUBLIC COMMENT PORTION

The meeting was opened to the public for comments or questions at 7:03P.M.

Mayor spoke regarding Mosquito Resolution. He spoke of illnesses caused by mosquitoes and asked Council to approve this resolution.

Betty Shriver, Atlantic Street, asked about notification to residents regarding the spraying. No notice is given. Councilwoman Sefcik asked that dates be posted on the website. She gave website listing scheduled spraying dates: www.visitmonmouth/mosquito.com

Mike Lane, 51 First Street, asked about questions raised on the subject of Ye Cottage Inn. Mr. Lane asked status of library audit and about property management activities.

Mayor stated he inquired of Ye Cottage Inn. They provided a survey which seems to overlap with what our tax map shows. Because of the age of the town we have overlaps and gores (holes)

Administrator explained as a result of Waterfront Park, an outbound survey was done. This will be a good starting point.

Elmer Graham Jr, St Peters Place, one of the road signs are missing from St. Peters Place. Mayor replied that he will bring it to Mr. Sappah's attention

Joy Tomczak, Fulton Street, asked how many more Budget meetings were held and whether that will be addressed at this meeting.

Ms. Ambrose replied that it is listed on the agenda

Mr. Sheridan asked that R106-11 be pulled to vote on separately

Motion to pull Resolution 106-11 was made by Mr. Sheridan, second by Mr. Toglia with ayes by all present.

Motion to table Resolution 106-11 Authorizing Approval of Monmouth County Mosquito Extermination Commission to Apply Pesticides from Aircraft to Control Mosquito over Portions of the Borough of Keyport made by Ms. Bolte, second by Ms. Sefcik

Roll Call: Ayes: Councilmembers Bolte, Sefcik, Chamberlain, Ambrose, Toglia
Nays: Councilman Sheridan
Abstain:
Absent:

Councilman Sheridan would like it referred to the Environmental Commission to set up a conference and invite Mosquito Commission.

There being no more comments or questions from the public, the meeting was closed to the public at 7:12 P.M.

APPROVAL OF RESOLUTIONS

Motion on the Consent Agenda made by Mr. Sheridan, second by Mr. Chamberlain

Roll Call: Ayes: Councilmembers Bolte, Sefcik, Chamberlain, Sheridan, Ambrose, Toglia
Nays:
Abstain:
Absent:

COMMUNICATIONS AND PETITIONS

1. Letter from Antonia Pepitone expressing interest in hosting a food kiosk at Waterfront Park

Mr. Sheridan stated there was concern with someone competing with a downtown business. Administrator Wright stated there are certain restrictions in place at the Waterfront Park. Any money generated must go to maintenance of the park.

Motion to refer to Administrator moved by Ms. Bolte, second by Mr. Sheridan with ayes by all present.

2. Letter from Keyport Yacht reconfirming permission to use the Borough's lot located at Second and Church for additional parking spaces for members and guests of the Keyport Yacht Club for the period of May 1st to October 31, 2011

Motion to approve moved by Mr. Sheridan, second by Ms. Bolte with ayes by all present

3. Notice from 180 Turning Lives Around regarding their hosting "Denim Day" throughout Monmouth County on April 28, 2011

Motion to receive and file moved by Mr. Sheridan, second by Mr. Chamberlain with ayes by all present.

4. Letter from Keyport Fire Department regarding annual inspection and Parade on May 7, 2011 at 6PM. Parade at 7PM

Motion to refer to Administrator and Police Chief moved by Mr. Sheridan, second by Ms. Sefcik with ayes by all present.

REPORTS OF DEPARTMENTS

1. Borough Clerk's Monthly Report for March 2011
2. Tax/Water/Sewer Collector's Report for March 2011
3. Building Department Monthly Report for March 2011
4. Meeting Minutes of the Keyport Recreation Commission for March 3, 2011

5. Board of Health Monthly Treasurers Report for March 2011
6. Municipal Court's Monthly Cashbook Report for March 2011

On file in Borough Clerk's office for review.

Motion to receive and file all reports as read, moved by Mr. Sheridan, second by Mr Toglia with ayes by all present.

COMMITTEE REPORTS

Councilwoman Bolte: Public Works/Recycling/Property Maintenance: Ms. Bolte reported that the Recycling Committee is coming up with materials to reach out to the public on what can and cannot go out. New recycling cans and garbage cans have been purchased and are at the Waterfront.

Councilwoman Sefcik: Health and Recreation: Ms. Sefcik reported that Recreation had another successful Easter Egg Hunt this weekend; she applauded the committee for their hard work. Summer Recreation program is taking applications for counselors. Ms. Sefcik stated that Recreation will have a movie night at the waterfront on August 2nd.

Councilman Chamberlain: Fire/First Aid/Emergency Services: Mr. Chamberlain read number of Fire Department calls. Had a rescue of a boat – pulled it into the marina.

Councilman Sheridan: Police: Mr. Sheridan reported on the following:

- Operation Take Back NJ – to dispose of unwanted medication is Saturday, April 30th
- Read arrest report – Police are way ahead of last year. Lt. Casaletto recommended a 4-hour DWI stop. Would like patrols to be more aggressive. Will coordinate with Administrator
- On April 5th – he attended Historical Society's baseball presentation

Councilwoman Ambrose: Finance/Grants/Redevelopment: Ms. Ambrose reported that the Finance Committee met three times this week. Working to get the budget down to an acceptable rate for the taxpayers.

Councilman Toglia: Buildings/Grounds/Library: Mr. Toglia reported that the Old Municipal Building may be up for sale. Waiting for an appraisal. Interested buyer has his appraisal.

Library – looked at cracking sidewalk. Spoke of magic Touch donating their services to correct sewer smell.

UNFINISHED BUSINESS

Discussion regarding 2011 Municipal Budget

Ms. Ambrose stated that the School Board is looking for 2.5% increase. Vote on School Budget Wednesday, April 27th. Examining different departments. We have a duty to the tax payers to present the lowest numbers. May 3rd will have an amended budget.

The meeting was opened to the public for comments or questions at 7:37P.M. Motion made by Mr. Chamberlain, second by Mr. Sheridan with ayes by all present.

Mike Lane spoke of School Board having two buckets for their budget. Flyer that came out does not give the rate or increase to the taxpayers. Feels both parties' political statements should lead to some goals and how they will be implemented. Asked whether the public would have opportunity to see budget prior to meeting.

CFO – Amending resolution will be in Council's packets. Will be available on Monday before the meeting.

Mayor – Interlocals in several departments are being pursued.

Sal Costanza – terms and conditions of employment must be negotiated. Feels he is not being told what is going on; would like a meeting set up.

Mayor explained that, at last meeting there was substantial opposition to a 2.4 cent increase. Because of that opposition, went back into budget meetings.

Administrator agreed that negotiations will continue with the Union. She scheduled a date of April 21st.

Ms. Bolte asked why these employees were Rice noticed.

Mayor stated that when Rice notices went out, there was the potential of discussing them

Administrator explained that the intent of notice is to give the employee the right to hear. If it was more specific, employees would be notified. Budget Committee would make a recommendation to Council and it will be voted on.

Ms. Bolte asked who instructed the Administrator to determine who would and would not be noticed.

Ms. Ambrose replied the Finance Committee instructed the Administrator.

Joy Tomczak, 109 Fulton Street, stated she is sensing aggravation from Finance Chair regarding being questioned. Mentioned that all finance committee members did not attend all meetings on the budget.

Ms. Ambrose, Ms. Tomczak's tone unacceptable. Explained what her priorities are: God, family, everything else. Said explained she missed a meeting because she had a family emergency.

Ms. Tomczak asked why Council was not informed of her emergency

Ms. Ambrose stated that she did let the Mayor, Administrator and CFO know.

Ed Burlew, 59 West Front Street, congratulated Ms. Ambrose for taking the job of Finance Chair that Ms. Sefcik refused.

Sam Minor asked about the Police Department salaries.

Attorney explained that binding arbitration is decided by a third party.

Mr. Chamberlain explained how those out-of-towners, which Mr. Minor referred to, are now called to respond. Explained there is a county rule that out-of-towners respond.

Mayor – there is a Mutual Aid Practice for Standard Operating Procedure in place

Ms. Ambrose mentioned that the Police Department has been cooperative in going over budget cuts.

There being no more comments or questions from the public, the meeting was closed to the public at 8:04 P.M.

Mayor read a statement regarding the KCCC.

KCCC

The Keyport Cultural Celebration Committee, hereinafter referred to as the KCCC, was formed pursuant to Resolution No. 323-07 of the Mayor and Council adopted December 18, 2007 "for the purpose of assisting the Borough in the planning, funding and execution of events planned for the celebration of the Borough's Centennial." The Certificate of Incorporation as a New Jersey Nonprofit Corporation was filed February 15, 2008. The Borough's 2008 Centennial came and went and with it the stated purpose of the KCCC became moot. Yet it has continued to this day. I have been provided with no subsequent authorizing Resolution or Ordinance adopted by the Mayor and Council since December 18, 2007.

A salient characteristic of the KCCC is that it operates without any established procedure for oversight. The Certificate of Incorporation does not provide for any mechanism for the Mayor and Council to appoint the Board of Trustees or have any control of them. Article VII of the

Certificate of Incorporation states that "The management and control of the Corporation shall be vested in a Board of Trustees which shall be elected in the manner provided in the bylaws."

The Bylawsⁱ provide for the number of Trustees and the manner in which they are appointed. The Trustees are selected by the Trustees. "Trustees may succeed themselves."ⁱⁱ Thus, the KCCC is operated by a self-perpetuating Board of Trustees with limited oversight. I am advised that its gross income is insufficient to require an audit.

There are no elections as with the KBA or appointments by the Mayor with the advice and consent of the Council as with the Board of Recreation Commissioners. The initial Board of Trustees consisted of Councilwoman Christian Bolte, Peter Valesi, the Borough Administrator, and Carla Cefalo, the Borough's Community Development Coordinator. The bylaws have since been amended several times, by the Board of Trustees itself, to provide presently for a Board of Trustees of seven members, including the Mayor and a "Community Development Coordinator with experience in Marketing, Event Planning and Fundraising."ⁱⁱⁱ This last Trustee is a paid Borough employee.

The bylaws further authorize that "the Board may retain additional staff from time to time as it may deem necessary,"^{iv} Initially the KCCC solicited tax deductible donations from professionals who contracted with the Borough. That created a "pay-to-play" problem. At the request of Councilmen Kovacs and Sheridan this practice was stopped in 2009. I am advised that the KCCC continues to file Form 990 with the IRS but its donations are mostly small and in kind. The tax deductible advantage is negligible.

A review of the minutes, declarations and activities for 2009 and 2010 reveal that the stated role of the KCCC is be a "catalyst for community based programs and events designed to enhance public pride, offer community-wide recreation and to promote economic activity within the Borough." It essentially coordinates and facilitates the forming, funding and operation of volunteer organizations in the Borough. The KCCC states that "[t]he Garden Club was formed under the direction of the KCCC Board and is now a successful, independent organization." All of the other volunteer organizations which the KCCC purports to "coordinate" were in existence before the KCCC was formed.

The KCCC manages 3 or 4 public events annually in the Borough. With the exception of the 14th Annual Country Jamboree these events are economically marginal. As is evident from the designation "14th Annual" the Country Jamboree long predates the KCCC.

The Keyport Business Alliance (KBA) and the Board of Recreation Commissioners manage a more extensive agenda of events, with frequent support from the Volunteer Fire Department and other organizations in the Borough.

The KBA is a business district management corporation established by an Ordinance adopted pursuant to a very specific enabling statute^v. That Statute confers very specific powers on the KBA.^{vi} These powers are to employ such persons as may be required;... apply for, accept, administer and comply with the requirements respecting an appropriation of funds or a gift, grant or donation of property or money; undertake improvements designed to increase the safety or attractiveness of the district to businesses ... or to visitors...; organize special events in the district;..., etc.

The Ordinance establishing the KBA occupies an entire Chapter of the Revised General Ordinances of the Borough of Keyport^{vii}. An Ordinance is the most formal act of a municipal governing body. That Ordinance sets forth the powers of the KBA pursuant to the Statute.^{viii} In accordance with that Statute and Ordinance the KBA proposes a budget which is then sent for review and approval by the Mayor and Council. Its finances are then subject to further audit and oversight.^{ix}

Like the KBA the Board of Recreation Commissioners was established by an Ordinance^x pursuant to an enabling State Statute^{xi}. That Ordinance provides that the Board of Recreation Commissioners "may arrange and provide for the giving of exhibitions, plays, concerts, games and contests" in the Borough of Keyport.^{xii} The organization, financing and reporting of these events is set forth in other subsections of the Ordinance.^{xiii}

By contrast the KCCC is an organization which was established by a Resolution, the least formal act of a municipal governing body, to carry out limited functions for the Borough Centennial. This nonprofit then self-perpetuated itself and continues without any formal accountability to the Mayor and Council. According to the minutes of the December 29, 2010 meeting of the KCCC Board of Trustees Mayor Bergen "suggested that under the advice of the Borough CFO, Tom Fallon, a separate bank account be opened with remaining proceeds since the KCCC is a separate non-profit 501-C3.... [The] motion carried." This is two days before Mayor Bergen left office. No such account has been established. The finances of the KCCC have always been operated through a dedicated rider or trust account under the general heading of "Recreation Events." There is no separate set of records to reconcile and audit.

The reason for the persistence of the KCCC as an organization becomes apparent when its minutes and records are reviewed. Two persons are always present: Councilwoman Bolte and the Community Development Coordinator, a paid Borough employee. During the Council meeting of August 17, 2010 Councilwoman Bolte read a prepared speech in which she derided and belittled the KBA and its activities. The KCCC has been maintained as an alternative to the KBA using Borough resources and Borough employees. As stated above it is controlled by a self-perpetuating and unaccountable Board which controls money used in the name of the Borough of Keyport

The Borough of Keyport does not need a private nonprofit corporation created without an enabling statute or ordinance, which is operated by a small group of Borough officials and employees by rules they drafted for themselves, with co-trustees they appointed, with few meetings and little or no review or approval by the governing body. That ends tonight.

As Mayor I am requesting a motion to amend the Agenda to add a Resolution abolishing the KCCC and transferring its functions and activities. That which begins by a mere Resolution ends by a mere Resolution; nothing more is required. Pursuant to that Resolution the Borough Attorney will be directed to formally dissolve the KCCC as a 501(c) 3. The events conducted by the KCCC and its other activities will be transferred to the KBA, the Board of Recreation Commissioners and other Borough agencies authorized and established by statute and ordinance. Its funds will be held in trust for further action of the Mayor and Council.

¹ Sections 5.02 and 5.03 of the Bylaws

¹ Section 5.03(2) of the Bylaws

¹ Section 5.02 - Trustees.

¹ Section 6.01 - Officers

¹ N.J.S.A. 40:56-65, *et seq.*

¹ N.J.S.A. 40:56-83

¹ R.G.O. Chapter 21.

¹ R.G.O. Section 21-8

¹ R.G.O. Sections 21-9, 11, 12

¹ R.G.O. Section 2-7.8

¹ N.J.S.A. 40:12-1, *et seq.*

¹ R.G.O. Subsection 2-7.8(e)1

¹ R.G.O. Subsections 2-7.8 (e)2, (e)3, (g), (h)

R131-11 Motion to table Resolution to Abolish the KCCC moved by Ms. Sefcik, second by Mr. Sheridan

Roll Call: Ayes: Councilmembers Bolte, Sefcik Sheridan

Nays: Chamberlain, Ambrose, Toglia, Mayor

Abstain:

Absent:

Ms. Bolte feels that the KCCC was created to do events which the KBA dropped. Stated KCCC runs at zero cost to the tax payer and made its own money back.

Ms. Sefcik stated that KCCC operates without any financial oversight. Ms. Sefcik asked CFO if procedure for spending money is the same as other Borough expenditures.

Mr. Fallon replied yes; Purchase Orders are signed by Councilmembers and Administrator.

Ms. Bolte stated that the KCCC is just like the Field of Dreams fundraiser Mayor attended this weekend. Feels KCCC came in where there was a need. Ms. Bolte pointed out that KCCC

raffles and social affairs permit were just voted on with yes votes from Council. Ms. Bolte asked who was aware of this being added to the agenda.

Ms. Ambrose stated that she found out ten minutes before the meeting. Feels KBA is capable of handling the events.

CFO Fallon explained that the Garden Club is run as a dedication by rider.

Ms. Bolte asked Mr. Sheridan if he knew; yes. Mr. Chamberlain and Mr. Toglia; yes

Mayor stated the particular tactic of adding this on the agenda he learned from the previous Mayor.

Motion to add Resolution 131-11 to agenda made by Ms. Ambrose, second by Mr. Chamberlain

Roll Call: Ayes: Councilmembers Chamberlain, Ambrose, Toglia, Mayor
Nays: Councilmembers Bolte, Sefcik, Sheridan
Abstain:
Absent:

Vote on Resolution 131-11 moved by Ms. Ambrose, second by Mr. Chamberlain

Roll Call: Ayes: Councilmembers Chamberlain, Ambrose, Toglia, Mayor
Nays: Councilmembers Bolte, Sefcik, Sheridan
Abstain:
Absent:

Ms. Sefcik asked about the Library audit

CFO stated it is ongoing; Auditor needs additional information from Library Director.

Ms. Bolte asked status of open position for Property Maintenance.

Administrator stated we have not gone outside the Borough yet to seek someone for the position.

ADMINISTRATOR'S REPORT

None

ATTORNEY'S REPORT

None

PUBLIC COMMENT PORTION

The meeting was opened to the public for comments or questions at 8:31 P.M.

Joseph Rendina, VP – PBA 223, spoke regarding issues of harassment; called Lt. Casaletto to come forward.

Lt. Casaletto stated Councilwoman Bolte's position on department members being forced to give time to an officer in need.

Ms. Bolte said she stands by her position that officers could not say "no" to donating time

Officer Rendina stated that he initiated the idea of officers donating time to an officer in need. Stated there was no harassment or coercion.

Mayor stated Ms. Bolte implied that Lt. Casaletto made his subordinates uncomfortable.

Lt. Casaletto feels that Ms. Bolte should be sanctioned for what she did.

Patrick DeNardo spoke of conditions of the Borough Hall, specifically rain coming through and causing mold conditions.

Mr. Sheridan stated there will be a fix once the budget passes. "We are past the lawyer stages and into the fixing stages."

Administrator said we are close to making a recommendation with the Engineer as to what to repair.

Mr. Chamberlain asked if there was a smell in someone's office.

Administrator replied that a hydraulic heater caused the smell.

Ed Burlew stated the KBA and Keyport Kiwanis have four community service people for 700 hours. Feels they could do work around the Borough.

Barbara Hassmiller, 12 Green Grove Avenue, asked whether the donation of time is only for Police Department or can it be opened up for other employees.

Lt. Casaletto explained pay scale is different than other employees; police make more.

Teresa Bolte asked Mayor if he recalls pointing out people who were drunk at an event they were both attending.

Joy Tomczak has no position on the donation of time but wants to know if the procedure complied with Civil Service.

George Walling commended Police Department for donating time to a fellow officer.

Mike Lane, asked for a clear indication of what the rate increase will be on the budget once it is adopted. Spoke of Property Maintenance report and asked if changes to the report have been made.

Mayor stated that Mr. Lane has given this presentation before. Said the government moves very slowly but changes are being worked on.

Mr. Lane passed out a property maintenance activity report that he prepared and went over issues with those properties.

Pat DeNardo spoke of small computer monitors and donated monitors being used in the Police Department

Dennis Fotopoulos questioned why insurance wouldn't cover replacement of the monitors

Administrator replied that the Borough has a large deductible

Attorney explained how Rice notices work and that one employee requested to be heard in closed session.

There being no more comments or questions from the public, the meeting was closed to the public at 9:07 P.M.

At 9:09 PM motion to go into Closed Session after a short recess was made by Mr. Chamberlain, second by Ms. Ambrose with ayes by all present

Meeting reconvened into closed session at 9:17PM

CLOSED SESSION

R132-11 Closed Session Resolution:

**RESOLUTION NO. 132-11
CLOSED EXECUTIVE SESSION**

WHEREAS, the Open Public Meetings Act, P.L. 1975, Chapter 231, permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, Mayor and Council of the Borough of Keyport are of the opinion that such circumstances presently exist; and

WHEREAS, the Governing Body wishes to discuss:

§ Personnel

NOW, THEREFORE, BE IT RESOLVED by the Governing Body that a meeting of the Mayor and Council shall be held forthwith from which the public shall be excluded in the Council Chambers, Borough Hall, for the purpose of discussing the above-mentioned items.

BE IT FURTHER RESOLVED that discussions on Personnel be conducted at said Closed Session shall be disclosed when the matters discussed are resolved and this meeting shall continue in approximately 20 minutes.

Offered for adoption by: Mr. Chamberlain, Seconded by: Ms. Ambrose

Roll Call Vote: Ayes: Councilmembers Bolte, Sefcik, Chamberlain, Sheridan, Ambrose, Toglia
Nays:
Absent:
Abstain:

Meeting returned to open session at 10:15pm.

Mayor announced that during the closed session a specific employee was discussed.

ADJOURNMENT

Motion to adjourn was made and carried at 10:15 pm

ⁱ Sections 5.02 and 5.03 of the Bylaws
ⁱⁱ Section 5.03(2) of the Bylaws
ⁱⁱⁱ Section 5.02 - Trustees.
^{iv} Section 6.01 - Officers
^v N.J.S.A. 40:56-65, *et seq.*
^{vi} N.J.S.A. 40:56-83
^{vii} R.G.O. Chapter 21.
^{viii} R.G.O. Section 21-8
^{ix} R.G.O. Sections 21-9, 11, 12
^x R.G.O. Section 2-7.8
^{xi} N.J.S.A. 40:12-1, *et seq.*
^{xii} R.G.O. Subsection 2-7.8(e)1
^{xiii} R.G.O. Subsections 2-7.8 (e)2, (e)3, (g), (h)