

**MINUTES OF THE MEETING OF THE
MAYOR AND COUNCIL
OF THE BOROUGH OF FRANKLIN
HELD AT THE FRANKLIN MUNICIPAL BUILDING
46 MAIN STREET, FRANKLIN, NJ
OCTOBER 11, 2011**

Mayor Crowley called the meeting to order and requested the Borough Clerk to call the roll. Upon roll call, the following members of the Governing Body were present: Ms. Gardell, Mr. Giordano, Mr. Kulsar, Ms. Miller, Mr. Snyder, Mr. Zschack, and Mayor Crowley.

Absent: None

Mayor Crowley led the assembly in the flag salute.

Mayor Crowley asked everyone to remain standing for a moment of silence for Sgt. Frankie Garrera who passed away on Friday, September 30th.

Mayor Crowley stated "This meeting is being held in compliance with the provisions of the Open Public Meetings Act, P.L. 1975, Ch. 231. It has been properly advertised and certified by the Clerk."

PRESENTATIONS

Retirement of Mike Gunderman

Mr. Gunderman was not present to receive his plaque and a gift in appreciation for his 42+ years of Service to the Borough of Franklin.

FOP Grievance

The FOP Grievance in the matter of Carl Douma will be heard later in the meeting.

CONSENT AGENDA

Mayor Crowley requested that all persons present review the consent agenda and offer any comments they may have at this time regarding the consent agenda.

Mr. Giordano made a motion to approve the consent agenda of, October 11, 2011; seconded by Mr. Zschack.

CORRESPONDENCE (ACCEPTANCE FOR FILING ONLY OF THE FOLLOWING):

1. Letter dated September 28, 2011 to Dr. Bingaman from Rachel Heath Board of Health Secretary.
2. Letter dated September 25, 2011 to Mayor Crowley from Ronald and Emma Hilbert.
3. Notice of Public Hearings, Pivotal Utility Holding, Inc. D/B/A Elizabethtown Gas Donald Carter, Vice President of Operations.
4. Notice of Public Hearings, Pivotal Utility Holding, Inc. D/B/A Elizabethtown Gas Donald Carter, Vice President of Operations.

REPORTS (ACCEPTANCE FOR FILING OF THE FOLLOWING):

1. Township of Hardyston August 2011 report for Gasoline and Diesel.
2. Zoning Officers Report for September 2011.
3. Building Department Report for September 2011.
4. COH report for September 2011

RESOLUTIONS (APPROVAL OF THE FOLLOWING):

1. Payment of bills for the meeting of October 11, 2011.

Upon roll call vote:

Ayes: Gardell, Giordano, Kulsar, Miller, Snyder, Zschack

Nays: None Absent: None Abstentions: None

COMMITTEE REPORTS

Ms. Gardell reported the Board of Public Works meeting scheduled for this week was cancelled.

Mr. Giordano had no report

Ms. Miller had no report

Mr. Snyder requested an Executive Session to discuss contracts.

Mr. Zschack had no report.

Mr. Kulsar reported Recreation is looking at downsizing the proposed building to basically a concession stand and rest room area. Recreation is also discussing with the various leagues to see if they can make some sort of contribution they might be able to make. Recreation is also discussing the lighting on the fields.

Mayor Crowley reported that there is a joint meeting with Hardyston, Hamburg, Ogdensburg and Franklin is scheduled for Thursday October 20th. Mayor Crowley, Council members Giordano and Kulsar are scheduled to participate.

Mayor Crowley stated that the passing of Sgt. Garrerra was a shock to everyone. Mayor Crowley commended the police for performance at the wake and funeral for Sgt. Garrerra. Mayor Crowley said there were so many people to thank; he does not know where to start. All of the Franklin Police as well as the police from the surrounding areas came forward to help with patrolling and the motorcade; which was the largest he as ever seen.

Mayor Crowley reported that the Senator Bob Littell was honored as Senior Citizen for 2011 at the Senior Citizen Oktoberfest on Saturday; and thanked Don Kovach for his participation in the presentation. Mayor Crowley thanked Mr. Snyder who was instrumental in getting the Senior Picnic back together along with the FOP, Franklin Firemen and the Franklin Fire Exempt, who all came forward and did a great job.

Mayor Crowley also thanked The Irish Cottage who donated a lot of the food that was served at the Oktoberfest.

Mayor Crowley reported that the Firemen's Parade was held in Franklin on October 1st; all 27 units from the County participated as well as out of County units.

Mayor Crowley informed the Council that the 100th Anniversary of Franklin is 2013. The 60th Anniversary celebration of the Borough was held on the same day as the Firemen's Parade. If everyone agrees, the Borough can plan to have the 100th Anniversary celebrated on the same day as the Firemen's Parade which is always the first Saturday in October.

If everyone is in agreement, Mayor Crowley would like to invite the Governor now so that it will be on his schedule for him, or if he is not available for the Lt. Governor to attend the celebration.

Mayor Crowley also stated that a committee should be formed to start planning for the 100th Anniversary; he would also ask that the Recreation Commission get involved.

The Council was in agreement to hold Franklin's 100th Anniversary celebration in conjunction with the 2013 Firemen's Parade and the Fire Department's 100th Anniversary celebration.

Mayor Crowley stated that since Sgt. Garrerra was scheduled to retire in November, Chief McInerney has been instructed to start the process to seek patrolman candidates. No one from the Council had any objections.

Mayor Crowley informed the Council that Mr. Kilduff is at Ft. Polk, Louisiana to welcome his son home. His son Brian, who was wounded and received a purple heart, is returning with his unit from a one-year tour of duty in Afghanistan.

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At this time, Mayor Crowley offered the Administrator's report.

Mayor Crowley, Police Chief, DPW Supervisor, CFO and the Emergency Management Coordinator met with the representatives of FEMA to discuss funding sources available to municipalities for Tropical Storm Irene. It appears that Franklin Borough will be eligible for some funding.

Mayor Crowley informed the public that homeowners seeking storm assistance must make their application to FEMA no later than October 31, 2011 to be eligible.

Bid opening for the Master Street paving and sidewalk project is scheduled for 11:00 AM on October 20th.

Mayor Crowley thanked the Girl Scouts for placing pink ribbons throughout Franklin as a reminder the October is Breast Cancer Awareness Month. DASI is also installing purple ribbons in the pond area for domestic abuse awareness month.

Viridian Energy has not been responsive, however the Borough is still hoping to have a representative to visit Franklin to review the process for 3rd party electrical provider billing.

The property tax sale conducted on September 28th netted the Borough \$20,000 in premiums. The tax collection rate for this year will improve slightly which helps to reduce the reserve for uncollected taxes in the 2012.

Dietz & Hammer Alternative Risk Solutions, Inc. is recommended for appointment as the Borough's Risk Management Consultant. Dietz and Hammer already represents the Borough in certain workers' compensation cases. There is no out of pocket cost to the Borough for this appointment; Risk Management consultants receive a fixed portion of the premiums paid to the joint insurance fund.

The three year shared service agreements with Hardyston Township for tax collection and finance services have been reviewed by the CFO, attorney and Statewide Insurance. These are the three year agreements requested by the Council.

Mr. Kilduff's report stated that the entire Borough mourns the unexpected passing of Sergeant Frank Garrera, a longtime Franklin employee and lifetime resident. In many ways Frank was larger than life and his passing had a profound effect on all of us. The residents, Police, Fire, Emergency Services, Elementary School, Public Works staff, Borough office employees and Council members all share in the Garrera family's loss.

The Deputy Clerk has informed the Administrator she will be out for the remainder of her employment (October 16th). She has used all benefit time; therefore no final payout is anticipated.

Personnel matters pending are: Temporary Clerk, DPW Manager and contract, Court Attendant, Police Chief Contract, Patrolman, Sergeant, Douma grievance and F.O.P Contract negotiations.

The Board of Health has appointed Robin Hough as Registrar. This action resulted from Ms. Nemeth's absences and need to provide essential services to the Borough.

The following Land Use applications are pending: Group 5 (Wal-Mart), CM Investment (Kulsar's), Wurtsboro Associates (Mainardi) and the Irish Cottage.

The backup well permit is still pending. No reason has been given for the delay, Mr. Kilduff has asked the Engineer to pursue the matter.

OPEN PUBLIC SESSION

Mr. Snyder made a motion to open the meeting to the public for anyone wishing to address the Governing Body. Seconded by Mr. Giordano. All were in favor.

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Joan Ann Tatka, 151 Maple Road questioned if Mr. Holzhauer, the Borough Tax Assessor is affiliate with Mr. Holenstein who will be appointed to assist with State Tax Appeals.

Mayor Crowley informed Mrs. Tatka that Mr. Holzhauer did at one time have a professional corporation; however they are no longer partners.

Mrs. Tatka asked if the Borough would consider combining the Planning and Zoning Boards to one Land Use Board.

Mayor Crowley informed Mrs. Tatka that the matter was addressed several years ago. Both Boards felt there were too many applications to have one Land Use Board because of the time involved; it would require volunteers to go out more than once a month for meetings. If, in the future, there are less applications then the matter will be revisited.

Mayor Crowley informed Mrs. Tatka that the north end of Rutherford Avenue was supposed to be redone as part of an application for a shopping center at the developer's expense. Unfortunately the property has not been developed.

Mrs. Tatka stated that there is going to be a lot of traffic detoured to Davis and Maple Roads when the bridge construction begins. Since only part of Maple Road was paved and there are problems with the little bridge Mrs. Tatka hopes someone will be monitoring the road conditions.

Mayor Crowley informed Mrs. Tatka that the County has been made aware that they are responsible for that bridge. He agrees that the bridge construction will be putting a lot of traffic on Maple, Davis and Scott Roads; it is not the best plan but the County is paying for it. Mayor Crowley stated that the bridge construction will also create an economic disaster for all of the small stores out on North Church Road.

There being no one else present who wished to address the Governing Body, Mr. Snyder made a motion to close the meeting to the public, seconded by Mr. Giordano. All were in favor.

OLD BUSINESS

There was no old business for tonight's portion of the meeting.

NEW BUSINESS

Approval of Meeting Minutes

Ms. Miller made a to approve the meeting minutes of the Regular Meeting and Executive Session held on September 27, 2011. (Absent: None) Seconded by Mr. Zschack.

Upon roll call vote:

Ayes: Gardell, Giordano, Kulsar, Miller, Snyder, Zschack

Nays: None Absent: None Abstentions: None

Appointment of Crossing Guard

Ms. Miller made a motion to approve the change of status of substitute crossing guard Ann Grabkowski to permanent crossing guard effective immediately at a rate of \$13.15 per hour as recommended by Mrs. Tremont, Head Crossing Guard; seconded by Mr. Zschack.

Upon roll call vote:

Ayes: Gardell, Giordano, Kulsar, Miller, Snyder, Zschack

Nays: None Absent: None Abstentions: None

Planning Board Appointments

Ms. Miller made a motion is in order to appoint Steve Zydon to the Planning Board as Alternate #1 and Nathan Foulds as Alternate #2, effective immediately.

Upon roll call vote: Ayes: Gardell, Giordano, Kulsar, Miller, Snyder, Zschack

Nays: None Absent: None Abstentions: None

Appointment of Risk Management Consultant

Ms. Miller made a motion is in order to adopt a Resolution appointing Wayne Dietz of D&H Risk Solutions as the Risk Management Consultant for Franklin Borough; seconded by Mr. Zschack.

Ayes: Gardell, Giordano, Kulsar, Miller, Snyder, Zschack

Nays: None Absent: None Abstentions: None

Shared Service Agreement for Tax Collection Services & Finance Department Services

Ms Miller made a motion to approve a three-year (2012 – 2014) Shared Service Agreement between Franklin Borough and the Township of Hardyston for Tax Collection Services and Finance Department Services; seconded by Mr. Zschack.

Ms. Gardell asked if the resignation of the Borough CFO would affect the Finance Department contract. Mr. Ursin stated that under the agreements either party can cancel the contract with a 90 days notice.

Ayes: Giordano, Kulsar, Miller, Snyder, Zschack

Nays: Gardell Absent: None Abstentions: None

Resignation of CFO

Ms. Miller made a motion to accept the resignation of Grant W. Rome, CFO effective October 21, 2011; seconded by Mr. Giordano.

Mayor Crowley informed the Council that Mr. Rome has accepted a position in Sparta which will allow him to work for one town which will give him more family time. Mr. Rome has been with Franklin Borough for 15 years. Mayor Crowley, on behalf of himself and the Council, wished him well.

Ayes: Gardell, Giordano, Kulsar, Miller, Snyder, Zschack

Nays: None Absent: None Abstentions: None

Mayor Crowley stated he would like to discuss the appointment of Holzhauer & Holenstein in executive session.

Mayor Crowley stated that following the executive session formal action may be taken on the appointment of Holzhauer & Holenstein and the Douma Grievance.

EXECUTIVE SESSION

In accordance with the provisions of the Open Public Meetings Act, Ms. Miller made a motion to adjourn into closed executive session to discuss personnel and contract matters. Motion seconded by Mr. Giordano.

Upon roll call vote:

Ayes: Gardell, Giordano, Kulsar, Miller, Snyder, Zschack

Nays: None Absent: None Abstentions: None

After meeting in closed session, the Governing Body returned to their seats at 8:10 p.m. and Mayor Crowley declared the meeting to be reconvened into open public session.

Appointment of Holzhauer & Holenstein, LLC

Ms. Miller made a to appoint Michael E. Holenstein, MAI of Holzhauer & Holenstein, LLC for the purpose of pursuing State Tax Appeal settlements at a fee not to exceed \$10,000 as recommended by the Administrator; seconded by Mr. Zschack.

Upon roll call vote:

Ayes: Gardell, Kulsar, Miller, Snyder, Zschack

Nays: Giordano Absent: None Abstentions: None

FOP Grievance in the Matter of Carl Douma

At this time, Mr. Ursin invited Mr. Douma and his attorney Steven Varano to address the Council regarding Mr. Douma's grievance against Franklin Borough.

Mr. Ursin stated that the Council is familiar with Mr. Douma who has recently retired as a Franklin Police Officer and that the Council is fairly intimately familiar with the events of both the work related injury and the various workers' compensation and disability issues that surrounded Mr. Douma's retirement. Mr. Douma is currently retired on a disability pension.

Mr. Ursin reported that Mr. Douma has filed a grievance asserting that he is entitled to additional monies related to his employment and separation from the Borough. Mr. Varano recently sent a summary letter explaining the basis for why Mr. Douma feels he is entitled to some additional compensation related to his separation from the Borough's employment.

Mr. Ursin explained that this is the next step in the grievance procedure under the police contract. Mr. Douma and Mr. Varano are entitled to make a presentation to the Council, the Council would then be required to make a ruling as to whether the grievance has merit and Mr. Douma should be paid additional funds. If so the Council will decide how much he is entitled to be paid; if not then the grievance would go to the next step which is the appointment of an arbitrator.

Steven Varano, Esq. stated he is representing Carl Douma in this matter. Mr. Varano stated he wished to elaborate on his letter dated August 30th.

Mr. Varano reported that Mr. Douma has been a Franklin Police Officer for over 19 years. On October 31, 2009 Mr. Douma was injured on duty, was unable to work and received Workers' Compensation benefits until said benefits were terminated on or about July 21, 2010. At that time Mr. Douma was cleared to return to work on a light duty basis. However, at that time the Borough advised they could not accommodate Mr. Douma's request for light duty and required that Mr. Douma use his accumulated sick, vacation and compensatory time until same was exhausted on or about December 25, 2010, the date the Borough wrongfully terminated Mr. Douma. Mr. Douma ultimately applied for Accidental Disability retirement benefits.

Mr. Douma has filed a separate grievance for wrongful termination that is still pending with a separate law firm.

Mr. Douma had retained another attorney to process his disability application with the Division of Pensions; Mr. Douma received an accidental disability pension effective January 1, 2011.

Mr. Varano stated that Mr. Douma should not have been required to use his accumulated sick, vacation and compensatory time from July 21, 2010 to December 31, 2010 based upon the Borough's 1) past practice of paying officers their full pay while out on disability; 2) failure to maintain a temporary disability insurance policy as is required by agreement; and/or 3) failure to accommodate Mr. Douma's request for a light duty assignment. Therefore Mr. Douma is entitled to eighty days of accumulated time he was required to use from July 21, 2010 to December 31, 2010.

In addition, had Mr. Douma not been required to use all his accumulated time, he would not have been wrongfully terminated in 2010. As such, Mr. Douma would have been recognized as a Borough employee on January 1, 2011 and would have been entitled to be paid for all of his vacation, holiday, sick, compensatory, and personal days which, by contract would have accrued and been available for use commencing January 1st of each year.

In essence, Mr. Douma lost 80 days that the Borough paid him with his own money; his current pay for that time period was \$523.68 per day which would amount to \$41,894.40. In addition the Borough owes Mr. Douma an additional \$29,849.76 representing 2011 accumulated time.

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Mr. Varano stated it is their position, based upon the past practice of the Borough, Officer Douma should be entitled to be compensated for the period of time between July 4th when his temporary Workers' Compensation benefits ended through the end of the year.

Ms. Miller asked Mr. Varano the total dollar amount Mr. Douma is seeking. Mr. Varano stated his calculations bridging the gap July 4th through the end of the year came to \$41, 894.40; the amount that was due in 2011 was \$29,849.76. The total claim was \$71,744.16. However, Mr. Douma was very reasonable in his request and is willing to accept the amount in the correspondence.

Mayor Crowley asked Mr. Varano when the matter of Mr. Harford occurred and if he was put on light duty. Mr. Varano stated that it was several years ago, but it is the only instance he knows of where an officer was injured on duty where his benefits had expired. Mr. Hartford was unable to return to work and the Borough paid him is full salary for a period of three months until his retirement.

Mr. Ursin stated that since Mr. Varano is making the presentation the Council will accept his answers as Mr. Douma's answers.

Mr. Ursin asked Mr. Varano if he agrees that from the time that Mr. Douma was injured on October 31, 2009 to the end of 2010 with distinction as to where the money came from, Mr. Douma received a pay check from the October 31, 2009 date to December 25, 2010. Mr. Varano stated this was correct with the exception of the last week in December.

Mr. Ursin stated that from January 1, 2011 and forward, Mr. Douma was approved for a State Disability Pension and received those benefits. Mr. Varano agreed.

Mr. Ursin stated that Mr. Varano mentioned the windfall for the Municipality in the fact that Mr. Douma retired through the disability pension on January 1, 2011. Also that Mr. Varano agreed that it was a different attorney who filled out Mr. Douma's application for the disability pension who selected that date as his retirement date.

Mr. Varano stated that is correct. However, given the circumstances at the time Mr. Douma was compelled to do that; had the Borough properly paid, him in our opinion how he should have been paid, that he would have been free to process that disability application in a different way. Specifically he could have easily put a retirement date of February 1, 2011 as opposed to January 1, 2011 then automatically this town would have then had to pay an excess of \$30,000.

Mr. Ursin noted that, even though Mr. Varano was not Mr. Douma's attorney at that time, you are aware that there was significant correspondence between the Municipality's attorney and Mr. Douma's attorney at that time questioning when the disability application would be filed.

Mr. Varano stated he is not personally aware of that; portions of that have been discussed with you. The point Mr. Varano is trying to make, even assuming that **you** are correct, in essence your argument is this should have been processed differently. That is Mr. Varano's point; if it was processed differently this Borough would have had to pay \$30,000.

Mr. Ursin stated that at the same time Mr. Varano is also arguing that in the time period from July of 2010 when the determination of maximum medical improvement is made in the Workers' Compensation case that the Borough should have paid Mr. Douma his paycheck without regard to his benefit time. Is that what you are arguing, and if so for how long.

Mr. Varano stated yes based on past practice he should have been paid the disability until he retired.

Mr. Ursin asked regardless of whether it took three months, six months or a year? Mr. Varano stated had it played out that way, it could have been negotiated. In the past the Borough did it three months, this was five months there is not much of a distinction.

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Regarding light duty, Mr. Ursin asked Mr. Varano if he was aware that Mr. Douma's doctor's note at the time that his light duty was a permanent restriction.

Mr. Varano stated that is correct. However, the Borough knew at the time that Officer Douma was still receiving treatment. Regardless of the decision of the Workers' Compensation carrier, he was still treating with his medical doctors for his condition. The Borough never inquired as to how long the permanent restriction would last and there were no steps taken to make that determination.

With respect to the disability insurance, Mr. Ursin stated that Mr. Varano is indicating that the Borough did not have the proper plan. Mr. Varano stated it is their position that the plan that is in effect does not satisfy the Borough's contractual obligation as set forth.

Mr. Ursin asked Mr. Varano if the plan that the Borough has in effect is the same as the State disability plan. Mr. Varano stated he is not aware of that; nor does he think it is relevant. The contract that was negotiated between the FOP and the Borough calls for a temporary disability insurance policy providing the equivalent of 66 2/3rds of the weekly earnings of each employee for six months.

Mr. Ursin stated that the key phrase is that it says "under the present plan" indicating that at the time the contract was negotiated the FOP was well aware of what the present plan was; the Borough has not changed plans.

Mr. Varano was not aware of those facts. However, there is no provision that would allow for exclusion, especially a duty work related exclusions.

Mr. Ursin understands Mr. Varano's argument. However, the contract specifically refers to the present plan which was in effect then.

Mr. Ursin had no further questions for Mr. Varano. Mr. Ursin informed the Council that they are free to ask questions. At that point the Council can deliberate between now and the next meeting.

Mr. Giordano asked Mr. Varano if Mr. Douma was a voting member of the FOP when the contract was accepted. Mr. Varano stated that Mr. Douma was a member. Mr. Giordano asked if Mr. Douma voted to accept the contract. Mr. Douma stated he would have to look at the contract but he is sure he was part of it. Mr. Douma agreed that the contract was accepted by the FOP as presented.

Regarding the doctor's note, Mr. Giordano stated that the definition of permanent is pretty clear.

Mr. Varano read the Doctor's note again and stated that the point he is making is the Borough never made any inquiry as to what the extent of the permanent disability restriction was.

Mayor Crowley asked Mr. Varano if the light duty he is referring to in the past had "permanent restrictions". Mr. Varano could not answer the question because not aware of that.

There being no further question for Mr. Varano, Mayor Crowley stated that the Council will take the matter into consideration and deliberate and will get back to him.

Mr. Ursin asked if it would be acceptable if the Council were to communicate their decision to him in writing within the next 30 days. Mr. Varano stated it would be acceptable.

Mr. Ursin will outline the issues and would expect at the next Council Meeting that there will be some time devoted in closed session to discussing this matter and formulating the direction and decision of the Council.

MISCELLANEOUS COMMENTS

Mr. Kulsar informed the Council that he wanted to express the Borough's appreciation to Hardyston Police who came forward, with the approval of Marianne Smith, to cover the shifts for two days to allow Franklin Police to attend Sergeant Garrerra's funeral services. Hardyston brought officers out on overtime at their own expense. Mr. Kulsar wanted to say an extra thank you to Hardyston Township and Marianne Smith.

Mayor Cowley stated that he saw the Hardyston Chief of Police directing traffic. A letter of appreciation will be sent to Hardyston Township.

ADJOURNMENT

There being no further items for discussion by the Mayor and Council, Mr. Zschack made a motion to adjourn the meeting at 8:35 p.m., seconded by Ms. Miller. All were in favor.

Paul B. Crowley, Mayor

Rachel Heath, Acting Clerk