

**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  
December 13, 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 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."

**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 asked to remove letter number one under correspondence off the consent agenda.

**CORRESPONDENCE** (ACCEPTANCE FOR FILING ONLY OF THE FOLLOWING):

1. New Jersey State League of Municipalities Advisory dated December 1, 2011 Re: Orientation for the Newly Elected, Re-elected, or Experienced.
2. Township of Hardyston Planning Board Notice of Hearing on Thursday, December 15, 2011 at 7:30.
3. Letter dated December 2, 2011 from Mayor Paul Crowley to Sergeant Delmont.

**REPORTS** (ACCEPTANCE FOR FILING OF THE FOLLOWING):

1. Franklin Borough Tax Department Report for November 2011.
2. Tax Collectors report for Hardyston for November 2011.
3. Fire Marshal/Fire Coordinator activity report for November 2011.
4. Building Department Report for November 2011.
5. COH report for November 2011.

**APPLICATIONS** (APPROVAL OF THE FOLLOWING):

1. None Filed

**RESOLUTIONS** (APPROVAL OF THE FOLLOWING):

1. Payment of bills for the meeting of December 13, 2011.

Mr. Zschack made a motion to approve the consent agenda of December 13, 2011, with the removal of letter number one under correspondence. Seconded by Mrs. Gardell.

Upon roll call vote:

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

Nays: None Absent: None Abstentions: None

**COMMITTEE REPORTS**

Mr. Kulsar had nothing to report.

Mr. Zschack had nothing to report

Ms. Miller requested Executive Session for personnel.

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Mr. Snyder had nothing to report

Mr. Giordano reported the Christmas tree lighting was fun; recreation gave out hot chocolate and some gifts.

Mrs. Gardell had nothing to report.

Mr. Ursin reported that the Court issued an order in the Transbanc case. Essentially the Municipality won both of the issues presented to the Court. Mr. Ursin explained the fine. Mr. Ursin informed the Council that the Court agreed that Transbanc needed to file a site plan. Mr. Ursin will forward the report to Mr. Kilduff for the Council.

Mr. Kilduff reported the following administrator's report which is also on file in the Clerk's office.

**Borough Sites and Street Issues**

The Borough Engineer and Administrator met with Midwest Construction regarding the Master Street paving and sidewalk project. Notices were sent out to residents to advise them of the start of construction. During construction signs are posted indicating the construction area and local traffic only. Paving is scheduled for the spring with the current focus on curbing and sidewalks. The Contractor advised the administrator today they expect to begin the concrete curbing and sidewalk work on Thursday, December 15<sup>th</sup>.

The Public Works Department has refurbished the freestanding "Welcome to Franklin" signs at the north and south ends of town on Route 23. They are to be commended for an excellent job.

A Bear Hunt was conducted from December 5<sup>th</sup> through December 9<sup>th</sup>. The NJDEP owned forestry building on Rt. 23 South was used as a weigh station. There were protestors and news coverage during the event. The Parks Service arrested one individual in connection with the picketing.

JCP&L has contracted with Lewis Tree Service, Inc. for trimming of certain trees within the Borough. The work was tentatively scheduled to begin around the 12<sup>th</sup> of December. The Borough's wood chipper is out of service; parts have been ordered.

Space Farms has offered a contract renewal for removal of deer carcasses from municipal roads for \$40.00 per deer. Formerly, the Borough paid \$45 per carcass.

**Financial Controls/Legal Issues**

The Franklin Revolver & Rifle Association memorandum of agreement for use of the club's range for our Police department has been signed by all parties. The new agreement allows the Franklin Police Department to schedule up to 8 dates for use of the club's range for police qualifying.

Hardyston has provided a notice of intent to terminate its interlocal tax collection agreement with Franklin. Under the current agreement, the cost is shared based upon the number of tax line items for each participant. As a result, Hardyston's share of the interlocal has climbed to 72% of the total. Hardyston has determined that it is no longer cost effective to maintain the current agreement as the actual savings are negligible and Hardyston would be better served by its own tax collector. The Franklin Tax collector has indicated an interest in transferring to Hardyston when the agreement terminates on March 1, 2012. Ms. Beshada expects her last day to be in February.

Budget hearings have begun with the individual departments and will continue next week. Upon completion of the budget meetings Council budget committee meetings will be scheduled.

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A petition has been filed with the State of New Jersey Department of Labor and Workforce Development Division of Worker's Compensation, regarding an employee. An executive session is requested on this matter.

Following review, Hillside Estates Mobile Home Park operating license is on tonight's agenda for renewal approval.

The Police Contract Negotiating Committee has met twice to review the current contract. Following these meetings, negotiations with the F.O.P. may be scheduled as soon as possible.

### **Operational/Personnel Matters**

A letter, signed by all nine full time employees of the Department of Public Works has been sent to the Administrator. The letter requests a meeting to discuss "the terms and conditions of the recognized bargaining unit agreement/ contracts and request salary percentage increases for the years 2011 through 2013". The administrator has met individually and in small groups with several of the employees.

The Office of Public Employees Occupational Safety and Health (PEOSH) has re-inspected the Borough's water and sewer department and advised the Borough, as a result of their inspection on December 6, 2011, the Borough has no outstanding hazards or violations.

Interviews for part time secretarial help are underway.

### **Land Use Matters**

On December 7<sup>th</sup>, The Zoning Board memorialized a resolution of approval for the former Kulsar's garage site (CM Franklin). This project includes site plan approval for retail uses in the existing building and a proposed 2,800sf drive-thru building on the same site.

The Board also granted variances to Shop Rite Liquors for a logo sign to be added to the building façade.

### **Long-term and Capital Projects**

The Administrator has discussed with the NJDEP Section Chief (Han Gheen) items required for its backup well permit and modification to the Borough's water allocation permit. The Borough Engineer has been directed to submit these items this week.

### **Executive Session**

An executive session is requested for personnel and contracts.

Mayor Crowley reported recreation did a nice job with that Christmas tree lighting ceremony. Franklin Band was also present. Mayor Crowley informed that Council that the League of Municipalities was offering training to Council members. Mayor Crowley commented on the demonstrators that were in front of the State Forestry Building during the bear hunt.

## **OPEN PUBLIC SESSION**

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

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

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**OLD BUSINESS**

Carl Douma's Grievance

Mr. Ursin reviewed Carl Douma's grievance with the Council. Mr. Ursin created a letter based on the Council decision on this matter; he provided copies of that to all of the Council members. Mr. Ursin asked if anyone had any questions. If the decision on what was written is acceptable to the Council then you would adopt it as your findings by motion. There was a brief discussion.

Mr. Giordano made a motion to adopt as the Council's findings, a letter from the Borough Attorney regarding Carl Douma's grievance and to reject Mr. Douma's grievance as without merit. Seconded by Mrs. Gardell.

Upon roll call vote:

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

Nays: None Absent: None Abstentions: None

Mayor Crowley asked Mr. Giordano to inform the Council on the sign recreation was working on.

Mr. Giordano referred to a letter in the packets that the Council received from Recreation member Mrs. Giordano. Mr. Giordano explained the estimates that recreation received to do the work on the sign and the location of the sign.

Mayor Crowley asked what the cost of the sign would be. Mr. Giordano said in the range of just less than seven thousand dollars. Mr. Giordano explained the costs of everything for the sign. There was a discussion on the cost of the sign, who would control the sign, the name on the sign and if the Borough engineer should get involved with the installation of the sign.

**NEW BUSINESS**

Mayor Crowley asked Mr. Giordano why he wanted letter number one removed from the consent agenda.

Mr. Giordano stated his reason to pull this letter off is when we talked about renewing the services for CFO with Hardyston we also renewed our construction office. Both of these agreements ran concurrent and that they would cancel each other out. Mr. Giordano said Hardyston paid us for CFO services we gave back for construction services. Neither one of us paid anything for one service or the other. We were trading services.

Mr. Giordano said now with this service going away he thinks we need to review the fact that Hardyston has taken on additional towns in their construction official service and he thinks it would behoove the Council to have our agreement adjusted to reflect the lack of service they can't provide us. There was a brief discussion on the shared construction service with Hardyston.

Approval of Meeting Minutes

Ms. Miller made a motion to approve the meeting minutes of the Regular Meeting and Executive Session held on November 22, 2011. (Absent: Gardell, Miller). Seconded by Mr. Zschack.

Upon roll call vote:

Ayes: Giordano, Kulsar, Snyder, Zschack

Nays: None Absent: None Abstentions: None

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Hillside Estates License Renewal

Ms. Miller made a motion to approve the Annual License Renewal for Hillside Estates for 2012. Seconded by Mr. Zschack.

Upon roll call vote:

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

Nays: None Absent: None Abstentions: None

Resolution No. 01-11 Payments for Service as Secretary to Various Boards, Commissions and Committees

Ms. Miller made a motion to adopt Resolution No 01-11 of the Governing Body of the Borough of Franklin concerning payments for Service as Secretary to Various Boards, Commissions and Committees. Seconded by Mr. Zschack.

Upon roll call vote:

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

Nays: None Absent: None Abstentions: None

Resolution No. 02-11 Authorizing Tax Refund for Assessment Values lowered due to the Revaluation

Mr. Zschack made a motion to adopt Resolution No. 02-11 authorizing the Tax Collector to refund 2011 tax overpayment of \$172.44 for Block 37 Lot 1 and \$260.46 for Block 75 Lot 3 due to their assessment values lowered to the Revaluation. Seconded by Mr. Snyder.

Upon roll call vote:

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

Nays: None Absent: None Abstentions: None

Resolution No. 03-11 Authorizing Tax Refund for Overpayment

Mr. Zschack made a motion to adopt Resolution No. 03-11 authorizing the Tax Collector to refund 2011 tax overpayment of \$1,565.47 for Block 55 Lot 16 due to a refinance that took place and the November 1<sup>st</sup> tax quarter was paid twice. Seconded by Mr. Snyder.

Upon roll call vote:

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

Nays: None Absent: None Abstentions: None

Removal of Deer Carcasses

Mr. Zschack made a motion to adopt a contract between Space Wild Animal Farm Inc. and Franklin Borough for removal of deer carcasses from municipal road right a way at a fee of \$40.00 per deer payable monthly valid through December 31, 2012. Seconded by Mrs. Gardell.

Upon roll call vote:

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

Nays: None Absent: None Abstentions: None

Approval of NJ State Firemen's Association Membership Application

Mr. Zschack made a motion to approve the application for membership of Zachary D. Postas, 20 Ben Franklin Drive, Franklin to the Franklin Fire Department as recommended by Fred Babcock, Franklin Fire Department Chief. Seconded by Mrs. Gardell.

Upon roll call vote:

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

Nays: None Absent: None Abstentions: None

Discussion on Representation of School Board Members at Walkill Valley Regional High School.

Mayor Crowley explained to the Council reduction of School Board members representing Franklin on the Walkill Valley Board of Ed. There was a brief discussion on the representation of school board members and when the change would take place.

Discussion EDU Rate Reduction Request for Four Winds Plaza Corp.

Mr. Kilduff explained a memo to the Council regarding application for Four Winds Plaza. Mr. Kilduff informed the Council this is the large industrial building in Hardyston Industrial park and they purchase sewer from the Borough. Mr. Kilduff said they had approached the Board of Public Works with an application seeking to reduce the number of EDU's based on their now tenant situation. The request was to go from 21 EDU's to 12 EDU's.

Mr. Kilduff said the Board had discussed this at length and they came up with 14[EDU] as a recommendation for the Council to consider should the Council decide to move forward with this. Mr. Kilduff said the biggest item of discussion during the hearing was how to measure who the tenants are in the building and how to tract whether or not the EDU's should change or not change. Mr. Kilduff said one of the things to consider was EDU's are based on the use and number of employees. Mr. Kilduff said the case is the building is in Hardyston not in Franklin so that limits our ability to monitor what goes on in the building. The Board had concerns with that. They discussed various ways they might be able to get some control over that.

Mr. Kilduff said [Board of Public Works] is an advisory Board they do not act. This is now before the Council for discussion and consideration. One suggestion by Mr. Bolcato the Board attorney is there should be some agreement in assessing the tenants in the building. The Council discussed the reduction of EDU's, this has been a discussion for years, the formula used to determine EDU's and how would the town know if their tenants increased.

*Mrs. Gardell said there is not an issue of that the formula reflects the actual gallons and usage of the sewer system. Mrs. Gardell said the building was built on speculation they had not tenants on at the time so when they had their site plan reviewed approved the initial EDU calculation was based on a theoretical number of tenants which was ten and theoretical number I think usage between office and warehouse and that type of breakdown. Mrs. Gardell said the EDU formula's calculated at that time was really speculation. Mrs. Gardell said this is a fully built out building they have less number of tenants than they expected to have and what they are proposing is completely to ordinance as far as how the building is being used, the number of employees and in regard to the amount of reduction.*

*Mr. Giordano said if they are to increase the amount of tenants they have there how would we know.*

*Mrs. Gardell said that is what Angelo Bolcato was addressing when he said that have an agreement that is recorded in the Clerk's office; that any new tenant that runs with that land to notify the town annually of a breakdown just like we did here of who the tenants are the number of employees, what the square footage is for the*

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*different types of use. Mrs. Gardell said the applicant was really detained on that annual reporting upon their own, they are paying an engineer to do it but they feel they have a good cause for reduction in EDU's because like I said they are fully built out and they are really only asking EDU's by our ordinance.*

*Mr. Giordano said but they gave us the information; based upon the information supplied by the applicant and he would like to think that his house has no EDU's but the fact is does. Mr. Giordano said he gets charged for sewer whether he uses it or not.*

*Mrs. Gardell said I do too by ordinance.*

Mr. Ursin said he doesn't want to influence your discussion or opinions you are free to debate this but let me emphasize one thing. Mr. Ursin said you cannot make any distinction between this customer being located in Hardyston or being located in Franklin. Mr. Ursin said this is a rate payer in your utility that has equal rights regardless to whether they are located in Hardyston or Franklin it makes no difference. They are a rate payer in your liquidating utility. Mr. Ursin said whatever your opinion is you're free to express it and debate it but don't let the fact that it is located in Hardyston versus Franklin be a factor.

Mr. Kilduff said he understands that point the one thing he brought up and was discussed was if the Council decides to proceed with this the question was how does the Borough monitor the tenancy within the building which affects the EDU count. Mr. Kilduff read number six from Mr. Knutelsky's report dated September 22, 2011. There was a discussion on how to monitor the tenants in the building, when there would be a reduction of EDU's versus an increase of EDU's.

Mayor Crowley stated what we have here is a recommendation from BPW we can accept their recommendation and pass it, we can reject it, we can ask for more information from the applicant; it is up to the Council. As far as he knows this is the only time BPW has sent a recommendation to us. They are only an advisory Board they have no power so it is up to the Council to decide what steps to go from here.

Mr. Giordano made a motion to reject the recommendation, based on the grounds that we can't control tenancy or the inspections of the facility and that the owners accepted the EDU's when it was built. Seconded by Ms. Miller.

Mayor Crowley said a vote of yes means that you are rejecting this application.

Upon roll call vote:

Ayes: Giordano, Kulsar, Miller, Snyder, Zschack

Nays: Gardell Absent: None Abstentions: None

### **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 attorney client privilege matters. Motion seconded by Mr. Zschack.

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 8:52 p.m. and Mayor Crowley declared the meeting to be reconvened into open public session.

### **MISCELLANEOUS COMMENTS**

### **ADJOURNMENT**

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There being no further items for discussion by the Mayor and Council, Mr. Snyder made a motion to adjourn the meeting at 8:53 p.m., seconded by Mr. Giordano. All were in favor.

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Paul B. Crowley, Mayor

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Robin Hough, Acting Borough Clerk