

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY
COUNCIL MEETING HELD FEBRUARY 5, 2019**

CALL TO ORDER

At 7:01 p.m. the Mayor called the meeting to order.

The Deputy Township Clerk stated that adequate notice of this meeting has been provided by posting the same on the bulletin board of Town Hall and forwarding a copy to the Courier News and Star Ledger at least forty-eight hours prior to this meeting, all in accordance with the Open Public Meetings Act.

ROLL CALL

The following Council members were present:

Mr. Bavoso
Mr. Couto
Mrs. Kingsley
Mr. Medeiros
Mrs. Poage
Mr. Yellin
Mayor Devanney

Also present were:

Township Attorney: Kraig Dowd
Township Administrator: Liza Viana
Deputy Township Clerk: Angela Lazzari

FLAG SALUTE

Mayor Devanney asked everyone present to stand for the Flag Salute.

CONFERENCE SESSION

Recreation Commission

Mayor Devanney confirmed that this has been postponed until the next meeting.

TOWNSHIP COUNCIL REPORTS

Mr. Bavoso reported on the following topics:

- Communications Committee

Mr. Bavoso discussed the concerns he raised at the Jan 15th Council meeting regarding Mr. Yellin and the conflict of interest in the Shared Services Agreement for DPW Director. Mr. Bavoso cited the opinion put out by Mr. Dowd's firm and asked Mr. Medeiros who asked Mr. Dowd to review this, since he seems to be involved. Mr. Bavoso stressed the need for a Council discussion on the topic, noting it hasn't happened yet.

Mr. Couto reported on the following topics:

- Chinese New Year Celebration
- Table Tennis Tournament

Mr. Couto addressed the issue of perceived conflict of interest with the Shared Services Agreement. He questioned Mr. Dowd about his discussions with Mr. Yellin, as well as his opinion memo. Mr. Dowd responded. The discussion continued with Mr. Bavoso and Mr. Medeiros.

Mr. Couto questioned Mr. Yellin and Mr. Dowd about the timing of the discussions they had and the nature of those discussions. Mr. Yellin and Mr. Dowd each responded.

Mr. Couto closed stating that he has asked for, and is again asking for, the entire Council's participation in a non-biased 3rd party professional opinion and proposed an independent party.

Mrs. Kingsley reported on the following topics:

- Warren Redevelopment Project
- New Township Website
- Downtown Beautification Committee
- Train Station Parking
- Chinese New Year Celebration

Mrs. Kingsley restated the concern she raised at the last Council meeting regarding the conflict of interest issue with Weber Dowd's working for the County. Mrs. Kingsley cited a County resolution appropriating funds for Weber Dowd and asked Mr. Dowd how it is not a conflict of interest. Mr. Dowd responded.

Mrs. Kingsley spoke to the dates of the Shared Services Agreement and the corresponding resolution and asked Mr. Dowd when he was asked to review the contract on behalf of Berkeley Heights and by whom. Mr. Dowd responded. Mrs. Kingsley asked Mr. Dowd who he is billing for his services in the month of December. Mr. Dowd responded.

Mrs. Kingsley made a statement recapping her concerns and expressed her opinion that the Council needs an independent 3rd party firm to provide an opinion on both Mr. Dowd and Mr. Yellin having a conflict of interest.

Mr. Medeiros reported on the following topics:

- Recycling Task Force

Mr. Medeiros addressed the concerns raised with regard to the Shared Services for DPW Director and read a statement. (A copy of this statement is attached to the permanent minutes.)

Mr. Bavoso responded to Mr. Medeiros' statement and a discussion followed.

Mrs. Kingsley asked about the objective of the Recycling Task Force and a discussion followed on the topic.

Mrs. Poage reported on the following topics:

- Lunar New Year Celebrations
- Girl Scout Project
- Planning Board

Mr. Yellin reported on the following topics:

- Communications Committee
- Lunar New Year Celebrations
- Electronics & Styrofoam Recycling

Mr. Yellin read a statement.

ADMINISTRATION REPORTS

Mayor Devanney discussed the following topics:

- Professional Services
- Electronics Recycling
- Township Development Projects
- Diversity Council Lunar New Year Celebration
- Connell We-Work Space
- New Township CFO
- Board of Education Shared Services
- Suburban Chamber of Commerce Mayor's Roundtable
- Police Department Personnel Update

Ms. Viana provided updates from the following departments:

- Engineering
- Wastewater Treatment
- Public Works
- Recreation
- Construction
- Zoning

Ms. Viana also provided updates on Township redevelopment projects.

Mr. Yellin spoke to Mrs. Kingsley's idea of a Parking Task Force and a discussion followed on the topic.

Approval of Township Council and Administration Reports

Mover: Mr. Yellin

Secunder: Mr. Couto

Ayes: Mr. Bavoso, Mr. Couto, Mrs. Kingsley, Mr. Medeiros, Mrs. Poage and Mr. Yellin

Nays: None

Abstain: None

Absent: None

Result: Approved

APPROVAL OF MINUTES

Approval of Minutes - **Public Meeting – October 9, 2018**

Mover: Mrs. Poage

Secunder: Mrs. Kingsley

Ayes: Mr. Bavoso, Mr. Couto and Mrs. Kingsley
Nays: None
Abstain: Mr. Medeiros, Mrs. Poage and Mr. Yellin
Absent: None

Result: Approved

HEARING ON AGENDA ITEMS ONLY

Opening of the Hearing on Agenda Items Only

Mover: Mr. Medeiros
Secunder: Mr. Yellin
Ayes: Mr. Bavoso, Mr. Couto, Mrs. Kingsley, Mr. Medeiros, Mrs. Poage and Mr. Yellin
Nays: None
Abstain: None
Absent: None

Mr. Maciejewski of 40 Ralph Place wanted to address an item not on the Agenda. Mr. Dowd confirmed that he will have to come back during the Citizens Hearing.

Closing of the Hearing on Agenda Items Only

Mover: Mr. Medeiros
Secunder: Mrs. Kingsley
Ayes: Mr. Bavoso, Mr. Couto, Mrs. Kingsley, Mr. Medeiros, Mrs. Poage and Mr. Yellin
Nays: None
Abstain: None
Absent: None

APPROVAL OF RESOLUTIONS

1. Resolution approving Bill List dated February 5, 2019 in the amount of \$988,904.97.

Approval of Resolution

Mover: Mrs. Kingsley
Secunder: Mr. Yellin
Ayes: Mr. Bavoso, Mr. Couto, Mrs. Kingsley, Mr. Medeiros, Mrs. Poage* and Mr. Yellin
Nays: None
Abstain: None
Absent: None

Result: Approved

*Mrs. Poage noted that her vote excludes the invoices from Plastic-Mart.com and Mai Day Productions LLC.

2. Resolution appointing Integra Realty Services as Real Estate Appraisal & Consulting Services for the Township of Berkeley Heights in an amount not to exceed \$30,000.00.

Mayor Devanney explained the reason for this resolution.

Approval of Resolution

Mover: Mr. Couto
Second: Mr. Yellin
Ayes: Mr. Bavoso, Mr. Couto, Mrs. Kingsley, Mr. Medeiros, Mrs. Poage and Mr. Yellin
Nays: None
Abstain: None
Absent: None

Result: Approved

3. Resolution authorizing an Interlocal Services Agreement with the City of Elizabeth, to provide Sexually Transmitted Diseases Services.

Approval of Resolution

Mover: Mr. Bavoso
Second: Mr. Medeiros
Ayes: Mr. Bavoso, Mr. Couto, Mrs. Kingsley, Mr. Medeiros, Mrs. Poage and Mr. Yellin
Nays: None
Abstain: None
Absent: None

Result: Approved

4. Resolution authorizing the submission of a treatment works approval application to the NJDEP for the Berkeley Heights YMCA, LLC, Block 2201, Lot 19.

Approval of Resolution

Mover: Mr. Yellin
Second: Mrs. Kingsley
Ayes: Mr. Bavoso, Mr. Couto, Mrs. Kingsley, Mr. Medeiros, Mrs. Poage and Mr. Yellin
Nays: None
Abstain: None
Absent: None

Result: Approved

5. Resolution urging the New Jersey Legislators to consider enacting legislation that would allow for a grace period on property tax payments for affected federal workers.

Mrs. Poage confirmed with Mr. Dowd that this is not a conflict of interest since her husband is a federal worker.

Approval of Resolution

Mover: Mrs. Poage
Second: Mrs. Kingsley
Ayes: Mr. Bavoso, Mr. Couto, Mrs. Kingsley, Mr. Medeiros, Mrs. Poage and Mr. Yellin

Nays: None
Abstain: None
Absent: None

Result: Approved

CONSENT AGENDA

All matters listed under Consent Agenda are considered routine by the Township Council and will be enacted upon by one motion; there will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

6. Consent Agenda Resolutions (a-g)

- a. Resolution removing Christopher Parisaca from the active duty roster of the Berkeley Heights Fire Department.
- b. Resolution removing Noah Truncale from the active duty roster of the Berkeley Heights Fire Department.
- c. Resolution removing Kyle Ulen from the active duty roster of the Berkeley Heights Fire Department.
- d. Resolution removing Glen Campbell from the active duty roster of the Berkeley Heights Fire Department.
- e. Resolution endorsing the Blue Light permit for Andrew Gallitelli, a member of the Berkeley Heights Volunteer Fire Department.
- f. Resolution authorizing the refund of a tax overpayment to Roger & Rochelle Levy, for a property located at 43 Webster Drive in the amount of \$92.41.
- g. Resolution authorizing the redemption of tax sale certificate #14-00002, to John Venutolo, 25 Hughes Place, Summit NJ, in the amount of \$113.61.

Approval of Consent Agenda Resolutions #6 a-g

Mover: Mrs. Kingsley
Secunder: Mr. Yellin
Ayes: Mr. Bavoso, Mr. Couto, Mrs. Kingsley, Mr. Medeiros, Mrs. Poage and Mr. Yellin
Nays: None
Abstain: None
Absent: None

Result: Approved

7. Resolution appointing Liza Viana to perform the functions of Township Treasurer/Chief Financial Officer on a temporary basis until such time as an individual is appointed to fill the position on a permanent basis.

Mr. Bavoso asked Mr. Dowd how this will work. Mr. Dowd responded and a discussion with Council followed.

Approval of Resolution

Mover: Mr. Bavoso
Seconder: Mr. Yellin
Ayes: Mr. Bavoso, Mr. Couto, Mrs. Kingsley, Mr. Medeiros, Mrs. Poage and Mr. Yellin
Nays: None
Abstain: None
Absent: None

Result: Approved

INTRODUCTION OF ORDINANCES:

Public Hearing and Final Adoption scheduled for February 19, 2019.

The Clerk presented and read:

“An Ordinance of the Township of Berkeley Heights, County of Union, State of New Jersey, Authorizing the Acceptance of the Dedication of an Extension of the Street Known as Wardle Avenue in the Township of Berkeley Heights. “

EXPLANATORY STATEMENT: This Ordinance authorizes and accepts the dedication of an extension of the street known as Wardle Avenue in the Township of Berkeley Heights.

That the Ordinance as read by the Township Clerk be offered on first reading, that February 19, 2019 be set as the date for public hearing and that the Township Clerk is directed to advertise same in the Courier News

Mover: Mr. Medeiros
Seconder: Mr. Yellin
Ayes: Mr. Bavoso, Mr. Couto, Mrs. Kingsley, Mr. Medeiros, Mrs. Poage and Mr. Yellin
Nays: None
Abstain: None
Absent: None

Result: Approved

CITIZENS HEARING

Opening of the Citizens Hearing

Mover: Mrs. Poage
Seconder: Mr. Yellin
Ayes: Mr. Bavoso, Mr. Couto, Mrs. Kingsley, Mr. Medeiros, Mrs. Poage and Mr. Yellin
Nays: None
Abstain: None
Absent: None

**Township Council Minutes
Public Meeting – February 5, 2019**

Mr. Joseph of 205 Gallinson Drive spoke about the Diversity Council's Lunar New Year event at the YMCA. He expressed his appreciation for Council support of the event and the Diversity Council.

Mr. Mondelli of 448 Lincoln Street spoke about an issue regarding a DPW employee which he said he was made aware of. Mr. Bavoso asked the date of the incident and a brief discussion took place. Mayor Devanney responded and the discussion continued.

Mr. Maciejewski of 40 Ralph Place asked who the acting Township Attorney was on January 1st prior to Mr. Dowd being appointed. Mayor Devanney and Mr. Dowd responded and some discussion continued.

Mr. Maciejewski asked how much of the bill list is for things already purchased. Council and Mrs. Viana responded and a detailed discussion followed to provide clarification on the process.

Mr. Maciejewski asked whether anyone checks the invoices, noting some Harbor Consulting invoice charges. Mayor Devanney responded. The discussion continued with Mr. Maciejewski and Council on the Bill List and invoicing.

Mrs. Varnerin of 20 Wardle Ave referenced the ordinance just introduced and expressed her support of it.

Mr. Cohen of 182 Dogwood Lane spoke in depth about ethics and integrity and expressed his disappointment in hearing that memos have been dropped and issues raised by Councilmembers aren't being addressed. He also noted his disappointed that Mr. Yellin and Mr. Medeiros would consider conflict of interest questions as being politically motivated.

Mr. Cohen asked if the memos discussed by Council would be released to the public. Mr. Dowd responded. Mr. Cohen asked if they will be disclosed by the governing body. Mayor Devanney responded.

Mr. Cohen asked that the Township implement Chapter 2.64 of the Municipal Code, the local government ethics board, at the next meeting.

Mr. Cohen continued to ask a number of specific questions to Mr. Dowd regarding his work on the Shared Services Agreement. His questions included who Mr. Dowd worked with, whether or not he shared the agreement drafts with Council and whether or not he was compensated for his work. Mr. Dowd responded to each of Mr. Cohen's questions.

Mr. Cohen closed by expressing the importance of this type of questioning and the need for Council to work together to jointly represent Berkeley Heights.

Mr. Medeiros responded on the topic and he and Mr. Bavoso had a discussion.

Mr. Birbrower of 103 Briarwood Drive W referred to the conflict of issue discussion when he noted that he believes the central issue is whether Councilman Yellin had torn loyalties. He asked Mr. Yellin a number of specific questions regarding his employment with the County. Mr. Yellin responded to each of Mr. Birbrower's questions.

Mrs. Cohen of 182 Dogwood Lane spoke in depth about the conflict of interest. She questioned Mr. Medeiros about why he would have addressed the memo with the Mayor, who chose the Counsel, and not the Council, who has no vested interest. She asked him if he believed it was equally possible that a legal issue could be brought, as he mentioned, then why didn't he raise the flag to Mr. Yellin to recuse himself to avoid the equal issue.

Mrs. Cohen questioned Mr. Yellin about the vote for Mr. Dowd and whether or not he will recuse himself from that. Mr. Yellin responded. Mrs. Cohen continued to question Mr. Yellin about his discussion with Mr. Dowd, the request for and the timing of his transfer within the County. Mr. Yellin and Mr. Dowd responded to her questions.

Mrs. Cohen closed outlining her issues with the process and suggesting that Council President Medeiros research the process so that any future work with the County is done correctly.

Ms. Ambrose of 75 Maple Avenue noted that she is an environmentalist and spoke about two topics she would like to see Council and the Township prioritize, green infrastructure and recycling. A conversation with Council followed about these issues, possible solutions and potential grant money available.

Ms. Illis of 102 Twin Falls Road suggested that the Downtown Beatification Committee sell reusable water bottles. She expressed her appreciation for the library space.

Ms. Chen of 6 Deep Dale Drive thanked the Mayor and Council for their continuous support for the Diversity Council. She also expressed her appreciation for the Environmental Commission, Communications Committee, and Downtown Beautification Committee.

Mr. Maciejewski asked who the Mayor's liaison for the library is. The Mayor responded.

Closing of the Citizens Hearing

Mover: Mrs. Poage
Seconder: Mr. Couto
Ayes: Mr. Bavoso, Mr. Couto, Mrs. Kingsley, Mr. Medeiros, Mrs. Poage and Mr. Yellin
Nays: None
Abstain: None
Absent: None

EXECUTIVE SESSION

1. Attorney-Client Privilege - Personnel – DPW

Move to go into Executive Session

(9:16 p.m.)

Mover: Mr. Medeiros
Seconder: Mrs. Kingsley
Ayes: Mr. Bavoso, Mr. Couto, Mrs. Kingsley, Mr. Medeiros, Mrs. Poage and Mr. Yellin
Nays: None
Abstain: None
Absent: None

The Mayor reminded all that they would be coming out of Executive Session, only to adjourn.

ADJOURNMENT

Moved by Mr. Couto to adjourn and all were in favor.

(9:16 p.m.)

Approved: June 12, 2019

Ana Minkoff ad

Ana Minkoff
Township Clerk

Council Presentation 02/05/2019

Two topics I want to address my time to today:

First of all I want to talk to a topic that was discussed at length both by my peers here on the dais and by members of the public at our last meeting on 01/15. This is the matter of whether Mr. Yellin should have recused himself from voting on a shared services resolution with Union County in regards to management of the DPW which was voted upon during our re-organization meeting on January 1. At our last council meeting, Mr. Bavoso raised a number of points and these have since been pursued further by Ms. Kingsley in emails to me and the other members of the town council. In her emails, Ms. Kingsley urges that the council seek an independent opinion about whether Mr. Yellin, an employee of Union County, should have recused from the vote and also whether Mr. Dowd should have been involved in drafting our agreement with the County based upon work that Weber Dowd has done for Union county. And finally she urges an independent opinion as to whether the resolution should be vacated given that the conclusion of the independent opinions would support Mr. Bavoso's contention of a conflict of interest as he expressed it at our last meeting.

I want to state clearly that I have discussed this topic with the mayor and the mayor has asked for both an independent opinion on Mr. Yellin's vote and also has directed Mr. Dowd to thoroughly research the matter. Both of these initiatives are intended to help the township defend itself in the event of a lawsuit that has been expressed as the true motive for the seeking such an independent opinion.

There are a few inaccuracies cited by both Mr. Bavoso in the document he read and Ms. Kingsley in the brief she sent me: Mr. Yellin was NOT hired by Mr. Graziano; Mr. Yellin does not work directly for Mr. Graziano and did not work in Mr. Graziano's department at the time of the vote. Finally, while we may seek to obtain independent opinions I do not have any confidence that these second opinions will serve

to dissuade any party that so chooses from pursuing a lawsuit. In fact from what I have seen in these emails it would appear that the brief for such a lawsuit has already been developed.

What has been raised repeatedly in this matter, is appearance. And I would like to point out, what should be clearly obvious, that for Mr. Yellin's vote to have been swayed by his employment by Union County, the county would have had to have a clear gain to realize from Mr. Yellin's vote and that Mr. Yellin would have realized any benefit as a result. That is Mr. Yellin would have been persuaded to vote in favor of the resolution and contrary to his sworn pledge to uphold the law that same day in order to benefit his employer, Union county. There is no such compelling benefit to the county: paying \$30k / year for Mr. Graziano's time does not materially benefit the county which has a budget of millions of dollars. In fact, I would say that the clear beneficiary of this resolution is Berkeley Heights since absent that resolution, we would be obliged to seek a qualified (and I emphasize) **experienced** DPW director to run that critical department. Instead Berkeley Heights benefited from Mr. Graziano's considerable expertise at a fraction of the cost. Union county received only the assurance that Mr. Graziano's work on behalf of Berkeley Heights would not interfere with his responsibilities to Union County. We have had the benefit of over a month under Mr. Graziano's leadership of the department, in the dead of winter, and I doubt anyone would disagree we are in good hands and at a cost considerably less than what we would otherwise have incurred. Clearly Berkeley Heights has enjoyed an advantage and that reflects well on Mr. Yellin's obligation to discharge his duty as a member of the township council.

Finally, the suggestion that we should vacate the resolution installing Mr. Graziano out of preponderance of caution would subject the township to a level of uncertainty that I believe would be irresponsible of any leader of the township advocating for that or, worse still, litigating for that result.

On a lighter note, the second topic I wanted to address today is the establishment of a Mayor's Recycling Task Force whose goal is to improve the experience of Berkeley Heights residents with regard to the cost and ease of recycling and contributing to the health of our environment. While this may appear to be a matter for the Environmental Commission, it is not the sole focus of their charter and recycling is a matter that suffers from confusion and challenges both within and outside of Berkeley Heights. This task force will have the full weight of the Mayor's support and an unrelenting focus on recycling, a focus and emphasis which it deserves. We are inviting volunteers to join us and help investigate every solution possible and leverage their passion for solving this worldwide problem from a Berkeley Heights perspective for the benefit of Berkeley Heights residents.

