

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY
COUNCIL SPECIAL MEETING HELD FEBRUARY 9, 2022**

CALL TO ORDER

At 6:30 p.m. the Mayor called the meeting to order and the Township Clerk stated 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:

Gentiana Brahimaj
Manuel Couto
John Foster
Jeanne Kingsley
Jeff Varnerin
Angie D. Devanney, Mayor

The following Council members were absent:

Paul Donnelly

Also present were:

Township Attorney: Alex Fisher
Township Administrator: Liza Viana
Township Clerk: Ana Minkoff

FLAG SALUTE

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

Mayor Devanney read a statement on behalf of the Mayor and Town Council and Township of Berkeley Heights regarding the Municipal Complex. (A copy of this statement is attached to the permanent minutes.)

HEARING ON AGENDA ITEMS ONLY

Opening of the Hearing on Agenda Items Only

Mover: Mrs. Brahimaj
Seconder: Mr. Varnerin
Ayes: Mrs. Brahimaj, Mr. Couto, Mr. Foster, Mrs. Kingsley, Mr. Varnerin
Nays: None
Abstain: None
Absent: Mr. Donnelly

No voices were heard.

Closing of the Hearing on Agenda Items Only

Mover: Mrs. Brahimaj
Seconder: Mr. Foster
Ayes: Mrs. Brahimaj, Mr. Couto, Mr. Foster, Mrs. Kingsley, Mr. Varnerin

Nays: None
Abstain: None
Absent: Mr. Donnelly

APPROVAL OF RESOLUTIONS

1. Resolution authorizing certain actions in connection with the Municipal Complex Redevelopment Agreement.

Approval of Resolution

Mover: Mrs. Kingsley
Seconder: Mr. Varnerin
Ayes: Mrs. Brahimaj, Mr. Couto, Mr. Foster, Mrs. Kingsley, Mr. Varnerin
Nays: None
Abstain: None
Absent: Mr. Donnelly
Result: Approved

2. Resolution authorizing a contract with Neglia Engineering for Construction Management Services for the Municipal Complex, in an amount not to exceed \$50,000.00.

Mayor Devanney provided clarification of this contract.

Approval of Resolution

Mover: Mr. Varnerin
Seconder: Mr. Couto
Ayes: Mrs. Brahimaj, Mr. Couto, Mr. Foster, Mrs. Kingsley, Mr. Varnerin
Nays: None
Abstain: None
Absent: Mr. Donnelly
Result: Approved

CITIZENS HEARING

Opening of the Citizens Hearing

Mover: Mr. Couto
Seconder: Mrs. Kingsley
Ayes: Mrs. Brahimaj, Mr. Couto, Mr. Foster, Mrs. Kingsley, Mr. Varnerin
Nays: None
Abstain: None
Absent: Mr. Donnelly

No voices were heard.

Closing of the Citizens Hearing

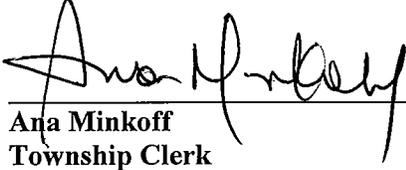
Mover: Mr. Couto
Seconder: Mrs. Brahimaj
Ayes: Mrs. Brahimaj, Mr. Couto, Mr. Foster, Mrs. Kingsley, Mr. Varnerin
Nays: None
Abstain: None
Absent: Mr. Donnelly

**Township Council Minutes
Council Special Meeting – February 9, 2022**

ADJOURNMENT

6:42 p.m. - Moved by Mr. Foster to adjourn and all were in favor.

Approved: April 5, 2022



Ana Minkoff
Township Clerk



MUNICIPAL COMPLEX UPDATE:
TOWNSHIP DECLARES EPIC IN DEFAULT FOR FAILURE TO PERFORM
FEBRUARY 2022

The Berkeley Heights Mayor and Township Council have issued a Notice of Default to Epic Management Inc. and Epic's performance bond company, Travelers Casualty and Surety Company of America, effectively ending Epic's involvement in the Municipal Complex Redevelopment Project. The Township is taking this action because, among other reasons, it believes Epic has failed to complete its obligations under its agreement with the Township in a timely manner. The Township believes that Epic should have made more progress than it has to date on the "punch list" items identified by the Township's Architect, Electrical Engineer and Landscape Engineer.

Epic is now required to complete these punch list items in the next 30 days. If it fails to do so, subject to certain extensions, Epic's performance bond company, Travelers Casualty and , will be obligated to ensure that the work is completed or that the Township is paid to have the work completed.

Although our employees officially moved into the building in December 2020, the work inside and outside has been ongoing. This is not uncommon. There are 3 punch lists, one prepared by each of Arcari + Iovino dated December 15, 2020, KSI Consulting Engineers, LLC dated June 4, 2021 and Harbor Consultants Inc. dated October 27, 2021, that detail the work to be completed after the Township moved into the building, but before the project is truly complete. These punch lists include dozens of unaddressed items - several critical ones - including:

- Multiple roof leaks throughout the building (to date, Epic has not been able to ascertain if it is just the roof, the masonry, or a combination of both).
- Automatic door operator at the main building entrance.
- Install ladder cage and safety post on roof ladder.
- Install security cameras in parking lot.

- Fix damaged light fixtures.
- Install the wayfinding and the LED signage to be installed near the intersection of Park and Plainfield Avenues.
- Fix the ADA sidewalk sloping and landing areas.
- Fix Uneven flooring in several areas.

Despite consistent communication from the Township to Epic with respect to the items on the punch lists, and now more than 13 months since the Arcari + Iovino punch list was first issued, Epic has not performed the remaining punch list work. In many instances, the Township staff injected itself into the construction management process to get work completed, including but not limited to:

- Working with the New Jersey Department of Environmental Protection (NJDEP) to determine the proper safe process for taking down the old asbestos-laden building.
- Hiring a qualified asbestos remediation company to do the work Epic's subcontractor would not complete without charging the Township significantly more money and taking more time than necessary (the Township's hired professional took less than two weeks to do the job, to NJDEP's satisfaction).
- Ensuring the swale drainage improvements were made.
- Hiring an outside elevator waterproofer to ensure the elevator was watertight after months of water seeping into the pit, in order to get the elevator approved by the State.

In the summer of 2020, the Township developed concerns with Epic's performance relating to what came to be called "Phase 2" of the project. Phase 2 consisted largely of demolition of the old municipal building and construction of the parking lots. Recognizing the need to complete the project without further delaying the Township's ability to fully occupy and utilize the new building, the Township amended its agreement with Epic to, among other things:

- a. Split the project into a Phase 1 and a Phase 2, and define the new completion dates by which each phase must be completed.
- b. Cap Epic's delay claim damages for Phase 1, which put a ceiling on the amount Epic could seek from the Township resulting from what Epic may allege were project delays outside their control (see below for more information on cap).
- c. Increase the per day monetary amount owed to the Township for failure to meet the Phase 2 completion date. For every calendar day past December 30, 2020 that Epic did not complete Phase 2 and did not have a claim for an extension of time, Epic owes the Township liquidated damages in the amount of \$1,650 per day, which is intended to provide for the cost to the Township to retain its construction professionals for the extended time period.
- d. Establish that the Township is not responsible for any costs relating to demobilization / remobilization during winter months, if applicable.

Fast forward to today: The Township contends that neither Phase 1 nor Phase 2 were completed by their required completion dates. In addition, the Township believes that there has not been enough meaningful progress on any of the 3 punch lists, including on mission critical items required for the public health, safety and welfare, all as identified by our architect and project managers (Mast).

[Click here to read more about what the Redevelopment Agreement did to put the Township in a better position today, and other background of the Municipal Complex project.](#)

NEXT STEPS

The Township will engage with Epic's performance bond company, Travelers, to cause Travelers to perform under the performance bond. This will likely include (i) Travelers undertaking to complete the punch list work, (ii) Travelers hiring a contractor to complete the punch list work or (iii) Travelers paying the Township an amount sufficient to complete the punch list work. In any event, the Township will make sure that the work is completed by a reputable provider, whether selected by Travelers or the Township to complete the work. We need to get this done; our residents deserve nothing less.