

**BOROUGH OF ROCKY HILL
COUNCIL MINUTES
December 1, 2008**

The regular meeting of the Borough Council of the Borough of Rocky Hill was called to order by Mayor Edward Zimmerman at 7:30 PM followed by the salute to the Flag.

NOTICE OF COMPLIANCE WITH OPEN PUBLIC MEETINGS ACT

The following statement was read into the record by Mayor Zimmerman: This meeting is called pursuant to the provisions of the Open Public Meetings Law. This meeting was included in a list of meetings advertised in the December 7, 2007, edition of the Courier News and transmitted to the Somerset Spectator. Notice has been posted accordingly and a copy of this notice is available to the public and is on file in the Office of the Borough Clerk.

CERTIFICATION OF 2008 GENERAL ELECTION RESULTS

The certification of the 2008 General Election (11/4/08) results as received by County Clerk Radi dated 11/25/08 was read into the record by Mayor Zimmerman: Two (2), three year seats to be filled by Julia Hasser and Mark Pausch; One (1) unexpired term through 12/31/09 to be filled by Courtney White. Resignation from the current Council seat was received from Ms. White. Mayor Zimmerman advised that the Ms. White would be sworn in this evening to the unexpired term (currently being filled by Ms. Hasser) leaving a vacant Council seat until the swearing in of the elected officials in January 2009.

OATH OF OFFICE - COUNCILMEMBER WHITE (ONE YEAR UNEXPIRED TERM THROUGH 12/31/09)

The oath of office was administered to Courtney White by Borough Clerk Donna Griffiths.

ROLL CALL

Mr. Jim Banks-present, Ms. Linda Goldman-present, Mr. Brian Griner-present, Mr. William Hallman-present, Ms. Courtney White-present

Also present: Borough Attorney Albert Cruz, Borough Engineer William Tanner, CFO Ross Bobal, Deputy Clerk Raymond Whitlock

MAYOR'S COMMENTS

- Mayor Zimmerman reminded Council that annual Committee reports are due in writing at the next Council meeting;
- Mayor Zimmerman advised that request has been received from a wireless carrier to rent space on the water tower. Motion was made by Hallman with a second by Banks authorizing Engineer Tanner to open discussions with the interested carrier. Motion carried on roll call vote - all ayes.

APPROVAL OF MINUTES

Regular Meeting Minutes –November 17, 2008 – Motion was made by Goldman with a second by Banks for the approval of the minutes as presented. Motion carried on roll call vote – all ayes; White-abstain.

REQUEST OF COUNCIL FOR NEW OR OLD BUSINESS (NOT ON AGENDA)

New Business - Signage - Hallman
Unfinished Business - American Water Contract - Griner

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PUBLIC COMMENT

The floor was opened to the public for comments/questions as follows:

Ralph Terragrossa, Montgomery Ave. – In response to questioning on the status of the tennis wall, Mr. Terragrossa was advised that certification has been received from the State Historic Preservation Office and the building permit has been issued. Mr. Terragrossa offered that the following comment made by him at the 11/3/08 meeting was not included in the minutes of that date, "I asked the Mayor whether there is verifiable evidence that the Borough wants the tennis wall and he (Mayor) responded there was not." Mr. Terragrossa's comment was noted. A request for a referendum on the wall was suggested by Mr. Terragrossa. Mayor Zimmerman responded that the Borough is past that point in that Council has approved the wall, contracts have been signed, permits have been obtained, and public comment has been taken into consideration. Mr. Terragrossa was referred to the Borough Clerk's Office for review of the relevant documentation on file in response to questioning as to whether the grant was offered for a tennis wall or backboard.

Martin Engelbrecht, Crescent Ave. - Mr. Engelbrecht expressed his opinion that the Borough should proceed with the building of the wall. He noted that he has been in attendance at the Council meetings for years and has witnessed discussions that have taken place regarding the tennis wall. He further offered that the opinion of one person should not hold up the progress.

Monica Lange, Montgomery Ave. - Ms. Lange countered that there is more than one person's opinion that should be considered.

Cliff Moore, Skillman Ave. - Mr. Moore stated that it is his impression that this wall is a replacement of a pre-existing wall that fell down. Regardless of whether it is classified as a wall or backboard, it is being used for recreational purposes, we are recovering the funds for the construction of it from the County, and he sees it as a positive thing.

Susan Bristol, Washington St. - Ms. Bristol questioned how the building permit was issued if the location of the wall is not at a location certain. Engineer Tanner advised that copies of the plan accurately reflect the location of the wall and the plans have been filed with the State Historic Preservation Office, the Construction Official's Office, and the Borough Clerk's Office. Ms. Bristol was advised that the location of the wall was shifted out subsequent to the original plan in order to move same away from the roots of the tree in response to concerns expressed. Councilman Banks responded that Council is satisfied with the location of the wall as reflected on the plan on file. Ms. Bristol offered that a less invasive location should have been sought.

Question was raised by Ms. Bristol as to the status of the 2003 Planning Grant for Design Guidelines that was afforded several years ago to the Borough by the County (noting correspondence received from the County under Communications). Mayor Zimmerman advised that the County is looking for the deliverable to prove that the project was completed by the Borough. Several documents have been forwarded to the County in response to their request, however, thus far the information that has been provided is not what the County is seeking. Ms. Bristol offered that the preliminary portion of the project was worked on during her tenure with the Planning Board, the document had been edited by several people, and it was turned over to now Chairman of the Planning Board Charlie Pihokken. She offered that she may have copies of the document. In response to concern expressed as to whether the Borough will be forfeiting the grant monies, Mayor Zimmerman related that it is the intention of the Borough to fulfill the obligation by providing the information, however, the decision as to whether the project can be carried out needs to be addressed by the Planning Board at the next Planning Board meeting. Deputy Clerk Whitlock advised that the Borough is in receipt of the original grant application and grant monies.

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Peggy Harris, Crescent Ave. – Ms. Harris questioned how the Borough was not required to seek Planning Board approval for the tennis wall since this is an encroachment upon property lines. Mayor Zimmerman advised that the project is not an encroachment on property lines, not a significant development, and when discussed with the Planning Board Chair, he (Mayor) was advised that the project did not fall within the jurisdiction of the Board. He also offered that the project has been reviewed by the State Historic Preservation Office (SHPO) and they have no issue with the location of the wall.

Monica Lange, Montgomery Ave. – Ms. Lange questioned how the determination was made by the Chair when the location of the wall was still undecided. Attorney Cruz offered that the change in location of the wall (away from the roots) and to the plans have been made as a result of public comment offered at the Borough Council meetings. The concept remained the same and the Chair ruled that the project did not require Planning Board approval.

Mr. Terragrossa expressed further opinion that the wall in its proposed location is an eyesore. A brief exchange ensued between the Mayor and Mr. Terragrossa, and Mr. Terragrossa left the meeting.

Ms. Bristol voiced her opinion that the inconsistencies with the wall have been upsetting to the residents. She offered suggestion that the monies be set aside until such time as the project can be looked at from a formal site plan review and in conformance with a master plan project review. Mayor Zimmerman responded that he is in agreement that a long range plan for the parks should be explored. However, the decision was made for this project by the Council with the health and well being of the children and residents of the community in mind.

Ms. Harris further related that she attends most meetings and she does not recall a lot of public discussion on this wall. She offered that the welfare of the children should be taken into consideration by way of addressing requests for equipment in the other parks in the Borough which she has personally made on repeated occasions.

Council Remarks:

Ms. Goldman offered that discussions on the tennis wall have taken place both at the Borough Council and Recreation Committee meetings. She *recalled* a prior discussion wherein it was agreed by Council that if additional landscaping is deemed necessary for buffering purposes, funds would be allocated from the Shade Tree Commission budget.

Mr. Griner stated that discussions have taken place and he voted in favor of the tennis wall. He offered that perhaps effort should be put forth in the future to notify residents within direct proximity of a project. However, he supports the decision that was made. The points of view expressed by the public have been noted and are appreciated. He agreed that funds received in the future should be considered for other projects/places in the Borough.

STATE POLICE REPORT

Report dated 11/30/08 as received 12/1/08 from Lt. Skelton of the NJSP was summarized by Councilman Hallman (copy on file in Borough Clerk's office).

ENGINEER'S REPORT

Report dated 12/1/08 for November 2008 from Engineer Tanner was received and distributed (copy on file in Borough Clerk's Office). The following issues were discussed:

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- Hickory Court – a DOT grant has been received for \$100,000.00. Authorization was previously granted by Council for Engineer Tanner to begin the process for this project to include the solicitation of bids and holding of public meetings. In response to question raised as to whether sidewalks should be installed, Engineer Tanner related that installation of sidewalks are normally included in grant requests in order to maximize the monetary benefit. However, the final decision as to whether to include them can be determined at a later date.
- All Hazards Plan – The final report has been approved by the Federal Government and the Borough will now be eligible for FEMA grant funding when applicable.
- Washington St. Sidewalks – Letter dated 11/25/08 (attached to Engineer's report) from Somerset County Dept. of Public Works, Engineering Division, was received. The County is deferring the acceptance of the alternate sidewalk design (4' wide against the curb and 4' between the curb and proposed walls) to the NJDOT Local Aid Office. No response has been received to date from SHPO regarding the review of this project.
- Tennis Wall - Letter dated 11/17/08 from the State Historic Preservation Office, Re: Park Behind Municipal Building - Tennis Wall was received. The letter states that "the project is in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties - Rehabilitation and does not constitute an encroachment and does not require further review under the NJ Register of Historic Places Act."

Council comments:

Ms. Goldman pointed out that the Hickory Court and Washington Street improvements are considered capital projects. Therefore, both projects are subject to review and public hearing before the Planning Board. In response to prior question raised by Ms. Goldman regarding the implications of a change order or cancellation of the tennis wall project, Engineer Tanner advised that the Borough could be subject to reimbursement to the contractor to include but not limited to: loss of time and materials, profit, loss of other contracting opportunities. It was his opinion that there would be a substantial financial detriment to the Borough by dropping the project. The issue with the *ruts* and removal of new seeding from the recently mowed area in Van Horne park was related to Engineer Tanner for follow-up.

In response to questioning by Ms. White, Engineer Tanner advised that there are instances where grant monies may be used for adjoining projects, i.e sidewalks for Washington St. As suggested, he will obtain prices for connecting the park possibly via a depressed curb along Princeton Ave. Mayor Zimmerman suggested that the sidewalks previously marked for repair/replacement should be re-walked and reevaluated. Councilman Hallman reiterated prior suggestion that residents be notified when the sidewalks are done to ascertain whether they want to have the service extended to them (at their cost).

Public comments:

Cliff Moore, Skillman Ave. – In response to questioning on the time line for the signage at Green Acres as previously requested, he was advised that the signage will be discussed at the Van Horne Park Committee meeting scheduled for Wednesday. (New Business requested by Councilman Hallman addressed).

Susan Bristol, Washington St. – Ms. Bristol noted that the pedestrian bike path from Van Horne Park exits onto Princeton Ave. in a dangerous way. Suggestion was made that the path be jogged and lined up with the Hickory Court project. In response to questioning as to why the paths in Van Horne Park were paved, Ms. Bristol was advised that decision was made to pave the paths due to maintenance issues that were encountered with the weeds growing into the gravel paths. The issue of overgrown brush at the intersection of Princeton Ave. will be related at the Van Horne Park Committee meeting.

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Peggy Harris, Crescent Ave. – Ms. Harris was provided with a breakdown of how the funds from the youth athletic grant were expended. Ms. Harris reiterated a prior recommendation for the use of half of the funds for municipal needs to include a flagpole and light at Panicaro Park. Mayor Zimmerman reiterated that the

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parameters for the spending of the grant have recently been changed and the use of the 2009 grant will be evaluated differently based on the spending parameters. Councilman Banks restated that efforts have been put forth in attempting to obtain lighting service from PSE&G for the flagpole at Panicaro Park. Ms. Bristol suggested that a solar power alternative be explored.

CHIEF FINANCIAL OFFICER'S REPORT

Budget Revenue and Expenditures Reports dated 11/28/08 and Trust Fund report dated 11/28/08 were distributed by CFO Bobal (copy on file in Borough Clerk's office). Motion to accept the reports as submitted was made by Goldman with a second by Banks. Motion carried on roll call vote – all ayes.

(A change in the agenda order of business was directed by the Mayor.)

SPECIAL BUSINESS:

Resolution 2008-75 - Transfer Resolution – Motion was made by Goldman with a second by Banks authorizing the transfer of funds in the amount of \$4,000.00 from Engineering O.E. to Planning Board O.E. as presented by the CFO. Motion carried on roll call vote – all ayes.

(The regular order of agenda business resumed)

APPROVAL OF VOUCHERS TO BE PAID

Motion was made by Banks with a second by Goldman for approval of the bill list as presented. Motion carried on roll call vote – all ayes.

Public comment: A public comment period was afforded for questions directed to CFO Bobal:

Susan Bristol, Washington St. – In response to questioning as to whether the 2003 planning grant monies will be refunded to the County since the project has not been completed to date, CFO Bobal and Attorney Cruz advised that the grant monies have not been expended and the funds will be carried until either the project is completed or the County requests a refund of the funds. The funds will remain in reserve until such time as a decision is made.

SPECIAL BUSINESS

Discussion of COAH Third Round Substantive Certification Documents – Documents in response to the newly enacted rules by COAH for third round substantive certification as prepared by Attorney Cruz and Planner Kimball were distributed. Attorney Cruz provided an overview of the documents provided. The Borough's petition and affordable housing plan needs to be filed with the Council on Affordable Housing (COAH) by 12/31/08. It was noted that the Planning Board endorsed the Housing Plan Element and Fair Share Plan at their 11/11/08 meeting, however, this document also requires endorsement by Borough Council. The Borough's plan for meeting the third round obligation as recommended by Planner Kimball will include: one rehabilitation unit, 10 accessory apartments, and the expansion of group home units by one bedroom.

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A draft Affordable Housing Development Fee Ordinance which has been amended in accordance with recently adopted provisions outlined in Assembly Bill 500 was distributed. Draft ordinance modifying Article 8 of the development regulations (Accessory Apartments Ordinance) was also provided. These two draft ordinances will be submitted to COAH for their review and approval prior to adoption by the Borough. Attorney Cruz advised that the development fee ordinance has been amended in accordance with suggestions made at the previous meeting relative to exemptions. Discussion ensued in response to question raised by Council member Goldman regarding whether private residences owned by houses of worship and used for income purposes would be considered for exemption from payment of development

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fees. It was noted that only "houses of worship" are exempt under the proposed ordinance. It was the consensus of Council to keep the language contained in the ordinance as presented. Attorney Cruz noted that the ordinances presented are in draft form, and any additional comments or suggested changes should be submitted for review prior to adoption.

In response to question raised by Councilman Hallman as to the implications of not fulfilling the accessory apartment obligation, Attorney Cruz advised that the program would be overseen by an Administrative Agent and monitored by COAH. In the event the Borough can not meet the obligation, the plan would need to be revisited and an alternative approach would need to be explored. Council member Goldman pointed out that COAH now allows for 10 year controls on the accessory apartments in lieu of the prior 30 year deed restrictions which may help in attaining more interest.

Further discussion ensued regarding the Borough's obligation to commit funds associated with the implementation of the Fair Share Plan. Councilman Hallman expressed his opposition to the Borough having to commit funds for potential shortfalls in satisfying our plan. Recent remark from the DCA Commissioner "that compliance with COAH obligations should not be taken from tax dollars" was noted. Attorney Cruz advised that the funding for the plan does not need to be committed all at once as the Borough has proposed a phased-in plan.

The following resolutions required to be submitted with the third round petition were adopted:

Resolution 2008-76 - Resolution Petitioning the Council on Affordable Housing (COAH) with an Adopted Housing Plan Element and Fair Share Plan - Motion was made by Hallman with a second by Goldman for the adoption of the resolution. Motion carried on roll call vote - all ayes.

Resolution 2008-77 - Resolution Requesting Review and Approval of a Draft Affordable Housing Development Fee Ordinance - Motion was made by Griner with a second by Goldman for the adoption of the resolution. Motion carried on roll call vote - all ayes.

Resolution 2008-78 - Resolution Requesting Review and Approval of a Municipal Affordable Housing Trust Fund Spending Plan - Motion was made by Hallman with a second by Goldman for the adoption of the resolution. Motion carried on roll call vote - all ayes.

Resolution 2008-79 - Resolution Setting forth a Commitment to Fund Costs Associated with the Implementation of the Borough of Rocky Hill's Housing Plan Element and Fair Share Plan - Motion was made by Goldman with a second by White for the adoption of the resolution. Motion carried on roll call vote - all ayes; Hallman-nay.

Attorney Cruz will file the petition and accompanying documents with COAH on 12/29/08.

UNFINISHED BUSINESS:

Recreation Agreement with Montgomery Township – Update – Mayor Zimmerman reported that there is no additional information to report on at this time.

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Draft Ordinance Discussion - Parks and Recreation Areas - Council member Goldman reported that the ordinance is under review by the subcommittee. Regulations on a permitting process for the use of the tennis courts as has been discussed will be included in the draft. A draft will be provided for discussion at the next meeting.

Discussion - Revaluation Proposal - Mayor Zimmerman advised that a proposal to do a reassessment has been submitted by Tax Assessor Sopko. Mayor Zimmerman noted that he has done some preliminary research with other municipalities as to the cost of this project some of which has varied from town to town. Due to the cost associated with the project, it is anticipated that a formal bid process may be in order. Attorney Cruz offered to provide draft bid specifications.

Discussion - Wtr/Swr Charge Appeal - Wagner - Letter dated 11/24/08 from Andrew Wagner,

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18 Merritt Lane, was received and distributed. Mr. Wagner is appealing the decision rendered by the Water Superintendent that the fees charged for the usage of the water should remain imposed based upon the meter testing report received certifying that the meter was working properly. It was agreed that an appeal hearing before Council should be scheduled for the December 15, 2008, meeting. Water Superintendents Merk and Lesko will be requested to attend the hearing.

American Water Contract - Attorney Cruz advised that he will follow-up on this issue with Counsel from American Water and report back at the next meeting.

Other:

In response to questioning by Councilman Griner for a status update on the ARC project, Councilman Banks advised that plans have been developed and ARC is expected to appear before the Planning Board. The plantings that were to be done in the Fall were not able to be coordinated. Councilman Griner offered his assistance with the follow-up on this project.

Councilman Hallman advised that the Board of Health has issued a health alert to cover the sandbox (at Borough Hall) and a sign will be installed for same.

NEW BUSINESS:

Signage - addressed during Engineer's Report.

COMMUNICATIONS:

Communications as listed were distributed, disseminated and filed accordingly. Additional correspondence was received as follows:

- Notice was received from the NJDEP declaring January as Radon Action Month. Copy will be provided to the Board of Health;
- Letter dated 11/25/08 from Assemblyman Biondi, Re: Information on hosted Events by VFW Post 2290.
- Letter dated 11/18/08 from Senator Bateman, Re: Information update on efforts to rein in COAH and the unrealistic third round obligations;
- 2009 Contract Proposal from Albert Cruz, Esq. - Borough Attorney;
- 2009 Contract Proposal from Christopher Bateman, Esq. - Municipal Prosecutor;
- Note dated 11/18/08 from Brenda Fallon, President, Mary Jacobs Library, Re: Thank you for financial support; commitment to maintain same \$150,000 operating budget for 2009.

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FINAL PUBLIC COMMENT

Peggy Harris, Crescent Ave. - The Rocky Hill Board of Education Treasurer's Report dated 10/31/08 (listed under Communications) was summarized as requested.

Susan Bristol, Washington St. - Letter dated 11/24/08 from Somerset County Planning Board (listed under Communications) was read into the record as requested.

ADJOURNMENT:

Motion to adjourn the meeting at 10:00 PM was made by Griner with a second by Goldman.
All voted in favor of adjournment.

Respectfully submitted:

Donna M. Griffiths, RMC
Borough Clerk