

Cape May Court House, NJ
Monday, December 12, 2016 6:00pm
SPECIAL MEETING
FLAG SALUTE
THIS MEETING IS BEING RECORDED:

This Special Meeting was called pursuant to the provisions of the Open Public Meeting Law. Notices of this meeting were emailed to the Cape May County Gazette, Atlantic City Press and the Cape May County Herald on December 7, 2016. In addition, copies of notices were posted on the bulletin board in the Municipal Building and filed in the office of the Municipal Clerk on aforementioned date. Notices on the bulletin board have remained continuously posted.

The Township Committee met on the above date at 6:00pm at the Middle Township Municipal Building. Members present were Committeeman DeVico, Committeeman Donohue, Mayor Clark, Township Clerk Kimberly Krauss, and Municipal Solicitor Corrado.

1. QUESTION/ANSWER PERIOD ON AGENDA (This question and answer session shall relate only to items as outlined and pending on current agenda. Issues and concerns not related to agenda item shall be withheld to public comment portion at the conclusion of meeting.)

John McCann, Fishing Creek Road:

- *Met with an investigator from the Department of Housing and Urban Development; investigation being worked by the Department of Housing and Urban Development together with the New Jersey Attorney General.*
- *Investigator was able to confirm an ongoing investigation with regards to Patsy's Way and/or the developer of Patsy's Way.*
- *Notes he met with same investigator over a year ago in regards to an OPRA request in regards to Patsy's Way.*
- *Residents felt there were various conflicts that needed to be brought up.*
- *Residents are concerned about the people that are going to live there and whether the area is right for them.*
- *Spoke of various plans of the developer.*
- *Location does not have sidewalks in the area.*
- *Engineering firm that did a phase 1 study in 2013 references that Patsy's Way was not in the vicinity of a dump.*
- *Displays a map from the 1960's that shows previous dumps known as "Joe Moore Dump" or "Stone Harbor Dump" in the area of the development.*
- *Indicates area has environmental concerns.*
- *Feels as though the township is in a high stakes game.*
- *Commends Frank Corrado for all he has done so far. Recommends that special counsel be hired to keep "all legal interests protected".*

Peggy Mathis, Cape May Court House:

- *Reiterated her comments from the previous meeting regarding the developer receiving permits prior to improved pavements.*
- *If the township only accepts bond, he can walk away.*
- *Feels a can of worms is being opened up for every developer in Middle Township to get permits and put up houses prior to roads and drainage improvements.*
- *In regards to item #5 and hiring interim business administrator, Stephen O'Conner, at \$80.00 per hour.*
- *Expresses concerns about Mr. O'Connor being paid properly.*
- *Feels as though there is already a qualified person already on the board that can do the job.*
- *Spoke of \$500 stipend for Ms. Krauss.*

Madelyn McCarroll, Cape May Court House:

- *Presented Committee with initial petition asking for the Zoning and Planning Boards to review various aspects of project from 2013.*
- *New usage of property and would require a new plan.*
- *Drainage not in place and asked about what is lying on top of the land.*
- *Asks for traffic study and what the ADA law requires of the community.*
- *Comments on the nearest transportation location and lack of sidewalks and shoulder-less roadways.*
- *At risk population in rural area.*
- *Requests committee to look into the services needed for the population and to see if EMS, fire and police have enough services for the proposed development.*
- *Concerned about flooding and endangered species that reside in "dump" ground.*
- *Spoke of landfill used for Stone Harbor for decades.*
- *Comments on County's reply to the State regarding the transportation report and the lack of the state to respond.*
- *Reiterates comments by Ms. Mathis regarding dump and ground water issues at the Zoning Board.*
- *Developers comment they would "just get city water".*

- Concerned about the cost to taxpayers.
- Comments on narrow roadways and concern that firetrucks would have difficult accessing Patsy's Way.
- Spoke of history of lawsuits by developer against other communities.
- Spoke of power outages and a recent fire and the need for specialized equipment.
- Feels the population is being put at risk.
- Presented items to give to the Judge and indicated that they do not believe the Judge has a full understanding of the situation.
- Spoke of some of the items the community would like to have presented to the Judge.
- Suggests a Land Use Lawyer to assist Mr. Corrado.
- Asked Committee to send a letter to the ARC containing information on the distance the people would have to travel along with road conditions, etc.

Committeemember Donohue:

- Asks for a show of hands of who is in favor of hiring a Land Use Lawyer.

Bill Albrecht, Cape May Court House:

- Spoke to issuance of building permits prior to improved roadways.
- Expresses concern that developer would begin construction without roadways, which can cause issues for ambulance and emergency personnel.
- Also believes that this will open it up for all potential developers.

Madelyn McCarroll, Cape May Court House:

- Presents the Committee with a box of documents that the residents have created during their "due diligence".
- Reviews some of the documents included.

George DeLollis, Cape May Court House:

- Spoke to procedure that he takes with potential homebuyers in the area with various County and Township departments as well as permits and approvals required.
- Believes this situation has a level of ambiguity to it.
- Asks the Committee if they really know what the developer is going to do with the property.
- Believes the development is commercial versus residential use.
- Indicates that the residents and government officials do not really know what is going to be developed.

Committeemember Donohue:

- Agrees to Mr. DeLollis' comments.

George DeLollis, Cape May Court House:

- Spoke of other developers that are looking to improve areas in Whitesboro under the same conditions presented for Patsy's Way with regards to lack of improved roadways.

Committeemember Donohue:

- States we are not going to be doing that with Patsy's Way.

George DeLollis, Cape May Court House:

- Believes the community leaders have a right to know what is going to be developed.
- Everyone needs to comply.
- Questions the Committee if they really know it is going to be 9 houses developed for disabled only people.

Mayor Clark:

- Does not believe that they do.

Committeemember Donohue:

- There is no comfort level.

George DeLollis, Cape May Court House:

- Questions if the Committee is confident that the developer cannot get an extension for his finances.

Frank Corrado:

- States he is not confident in that and it is one of the arguments made to the Judge.

George DeLollis, Cape May Court House:

- Spoke to his experiences with lenders and extensions.
- Reiterates his feelings that all have the right to know what the developer is really going to do.

Committeemember Donohue:

- It will come down to what falls under review of the Judge.
- Spoke to different items that can be presented such as the box of documents provided by Ms. McCarroll.

George DeLollis, Cape May Court House:

- Hopes the outcome of tonight's meeting will prompt more questions and more of an effort to see what is going on and if it is compliant.

Peggy Mathis, Cape May Court House:

- Spoke of her daughter's own handicaps and lack of access on Dias Creek Road.
- Has been looking for a community for her daughter where she would have sidewalks and public transportation.

- *Spoke to narrow roadways in the area where the developer is looking to build.*
- *Doesn't feel there is safe access to transportation.*
- *States that one would need to cross private property and cross Dias Creek.*

2. RESOLUTION NO. 522-16 – ACCEPTANCE OF PROPOSAL AND AUTHORIZATION OF SIGNATURE – ATLANTIC CITY ELECTRIC COST LETTER – INSTALLATION /UPGRADE EXISTING LIGHTING ROUTE 47 LIGHTING, RIO GRANDE – On motion by Committeeman Donohue seconded by Committeeman DeVico and passed on roll call, the following resolution was adopted.

NOW THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Middle, the governing body thereof, that the appropriate township officials are hereby authorized to sign the Atlantic City Electric cost letter, in connection with the Route 47 lighting upgrades in Rio Grande BE IT FURTHER RESOLVED, that the Finance Office shall also process payment in the amount of \$20,886.31, made payable to Atlantic City Electric, in connection therewith.

3. RESOLUTION NO. 523-16 – APPROVING PAYMENT FOR BILLS – BILL LIST A – On motion by Committeeman Donohue seconded by Committeeman DeVico and passed on roll call, the following resolution was adopted.

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Middle, the governing body thereof, that payment for the following bills in the amounts indicated are hereby approved:

Current Acct. \$ 26,136.31

4. RESOLUTION NO. 524-16 – CLOSED SESSION – PENDING LITIGATION (CAPE MAY POINT AFFORDABLE HOUSING, LP V. TOWNSHIP OF MIDDLE, TOWNSHIP OF MIDDLE PLANNING BOARD AND TOWNSHIP OF MIDDLE ZONING BOARD) – On motion by Committeeman DeVico seconded by Committeeman Donohue and passed on roll call, the following resolution was adopted.

WHEREAS, the section of the Open Public Meetings Law, Chapter 231, P.L. 1975, permits the exclusion of the public from a meeting in certain circumstances, and

WHEREAS, the Township Committee of the Township of Middle, the governing body thereof, is of the opinion that such circumstances presently exist, and

WHEREAS, said Closed Session shall be held directly after this open session.

NOW THEREFORE BE IT RESOLVED, by the Township of Middle, County of Cape May, State of New Jersey:

1.) The public shall be excluded from the discussion of an action upon the hereinafter specified matter: CLOSED SESSION – PENDING LITIGATION (CAPE MAY POINT AFFORDABLE HOUSING, LP V. TOWNSHIP OF MIDDLE, TOWNSHIP OF MIDDLE PLANNING BOARD AND TOWNSHIP OF MIDDLE ZONING BOARD)

2.) The general nature of the subject matter to be discussed is as follows:

CLOSED SESSION – PENDING LITIGATION (CAPE MAY POINT AFFORDABLE HOUSING, LP V. TOWNSHIP OF MIDDLE, TOWNSHIP OF MIDDLE PLANNING BOARD AND TOWNSHIP OF MIDDLE ZONING BOARD)

3.) It is anticipated at this time the above subject matter will be made public as follows:

WHEN THE MATTER IS RESOLVED

4.) This Resolution shall take effect immediately.

Upon adoption of this resolution and conclusion of this meeting the governing body will convene on the above referenced topic in closed session. This matter will be released to the public when the matter has been deemed resolved and the need to hear said item in closed session no longer exist. The public will be invited back into open session at the conclusion of this meeting and formal action may be taken.

5. RESOLUTION NO. 525-16 – AWARD CONTRACT AND RATIFY AGREEMENT THROUGH NON-FAIR AND OPEN PROCESS – SJC CONSULTANTS LLC – INTERIM BUSINESS ADMINISTRATOR – On motion by Committeeman DeVico seconded by Mayor Clark and passed on roll call, the following resolution was adopted. Committeeman Donohue voted No.

NOW, THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Middle, County of Cape May, State of New Jersey that the Agreement between SJC Consultants LLC. and the Township of Middle for Interim Business Administrator Services be and is hereby ratified and the contract is hereby awarded through the Non-Fair and Open Process as described in Pay-To-Play Statutes in the amount of \$80.00/hr. not to exceed \$15,000.00.

BE IT FURTHER RESOLVED, that said contract shall be for a period of three (3) months effective the date of this resolution.

FURTHER RESOLVED, that the appropriate officials are hereby authorized and directed to sign said agreement.

Committeemember Donohue:

- *Spoke to his feelings on the situation.*
- *States that without having anyone appointed for the past few weeks has hampered with the Township's ability to deal with emergent, time sensitive issues such as Patsy's Way.*
- *Spoke of his proposal to appoint Ms. Krauss.*
- *States the Township did not advertise for the position or hold interviews.*

6. RESOLUTION NO. 526-16 – TRANSFER OF FUNDS – On motion by Committeeman DeVico seconded by Committeeman Donohue and passed on roll call, the following resolution was adopted.

WHEREAS, it is legal and lawful to make budget transfers on and after the first day of November in any budget year; and
 NOW THEREFORE BE IS RESOLVED, by the Township Committee, the Governing Body of the Township of Middle, County of Cape May and the State of New Jersey, that the following transfers of budget appropriations be made in the budget of Middle Township for the year 2016:

		From	To
MUNICIPAL COURT - SALARIES & WAGES	6-01-43-490-490-100	4,000.00	
MUNICIPAL COURT - OTHER EXPENSES	6-01-43-490-490-200		4,000.00
		4,000.00	4,000.00

7. PUBLIC COMMENT:

Peggy Mathis, Cape May Court House:

- *Questions how long closed session will be and if any action will be taken afterwards.*

Committeemember DeVico:

- *Last closed session was an hour and twenty minutes.*

Frank Corrado:

- *Cannot say. It depends on what the committee discusses. They may or they may not.*

Peggy Mathis, Cape May Court House:

- *Questions if the last proposal was not accepted.*

Frank Corrado:

- *Confirms; states that he has a new proposal to make to the Committee in the closed session.*

Ed Taylor, Cape May Court House:

- *Questions the Committee if the tax sale advertisement has moved anyone forward to pay their taxes.*

Mayor Clark:

- *States he believes it has.*
- *Confirms he has seen some movement.*

Committeemember Donohue:

- *States he has spoken to the Tax Collector and she stated that they are on the same pace as last year.*

Motion to enter Closed Session – 6:49pm

1st: Committeeman DeVico

2nd: Committeeman Donohue

Roll Call Vote: Committeeman DeVico, Committeeman Donohue, Mayor Clark

Reenter Open Session –7:36pm

Mayor Clark:

- *States the Committee decided to not take any action.*

Committeemember DeVico:

- *States that Mr. Corrado will be going back to argue this in court.*

Frank Corrado:

- *States that a proposal to settle the lawsuit was discussed in closed session in which the Committee would have to adopt a resolution approving the settlement.*
- *Committee is not taking such action.*
- *The lawsuit is not settled; permits will not be issued.*
- *Will be back in court to argue the emergency relief that the developer is asking for.*

PUBLIC COMMENT:

John McCann, Fishing Creek Road:

- *Questions Mr. Corrado if Mr. Ruckenstein was present in a meeting he attended with the Judge and his attorney.*

Frank Corrado:

- *States Mr. Ruckenstein was in court but he was not in the meeting.*

John McCann, Fishing Creek Road:

- *Questions if anyone is allowed to be present during his meetings with the Judge.*

Frank Corrado:

- *Only his client as long as the Judge invites them.*
- *Explains how he understood the process was going to go last time he went to court, but instead the Judge wanted to make an effort to settle the case.*
- *Reiterates that the Committee at least meeting decided to not take action on the proposed settlement.*
- *States the Judge decided to postpone the hearing until the 14th to see if the modified proposal was acceptable to the Committee and they decided it was not.*

John McCann, Fishing Creek Road:

- States he feels Committeemember Donohue should attend since he has been involved since the beginning.

Frank Corrado:

- Confirms Tim will be going with him.

John McCann, Fishing Creek Road:

- Reiterates his suggestion to the Committee to seek special council.

Committeemember DeVico:

- Topic was discussed.

Mayor Clark:

- Committee will be doing that.

Committeemember Donohue:

- Asked Mr. Corrado to discuss the worst and best case scenarios.

Frank Corrado:

- Reiterates the two lawsuits the developer filed against the township including the "builder's remedy" and what should happen should the developed win said lawsuit (density bonus).

Bill Heun:

- Asks about CAFRA permit requirements for over 24 units.

Committeemember DeVico:

- States if the developer gets the builder's remedy, he can build whatever he wants.

Frank Corrado:

- Confirms CAFRA permits are not required for a builder's remedy.
- Elaborates on the difference between the two.

John McCann, Fishing Creek Road:

- Asks if city sewer and water will be necessary due to the potential number of units.

Frank Corrado:

- If he wins he can put it there.
- Only discussing best and worst case.
- Unsure as to who would be responsible for paying for infrastructure whether it is the township or the developer or split.
- Not covered for builder's remedy.
- The fees will be paid by the taxpayers.
- Spoke of a similar case Mr. Surienan was assigned to in West Cape May.
- Gave details of the Federal Lawsuit and potential fees the township could face.

Committeemember Donohue:

- Reiterates how seriously the Committee is taking the situation.
- States the offer that is available now, may end up being pretty good.
- Gave details of the proposal.

Frank Corrado:

- States developer is willing to dismiss the suits if the township issues the permits to build 10 units.
- Middle Township has no say in who populates the buildings.
- Federal and State law matters.

Sandy Cohn, Stage Coach Road:

- Indicated that during conversations with Mr. Ruckenstein, he expressed that he only had to put handicap into play for 30 days then it will be open to the public for anyone to use.

Committeemember Donohue:

- Asks Ms. Cohn to confirm how long ago this was.

Sandy Cohn, Stage Coach Road:

- During the first meeting with him three years ago.
- Expresses her concern with the burden on the town for schooling and other entities if granted density bonus of 40 units.

Frank Corrado:

- The developer may be allowed a bonus in density in worst case.
- Developer is not stating he is going to build 40 units.

Sandy Cohn, Stage Coach Road:

- Asks if it could put the township into bankruptcy and taxes being raised forcing others to leave the area.

Frank Corrado:

- The court is not going to put the township into bankruptcy.
- The township will face a burden if they are required to allow the developer to build an overly dense amount of units.

Committeemember Donohue:

- Feels as though Ms. Cohn's previous comment on her discussion with Mr. Ruckenstein is of the most concern.
- Refers to Conifer.
- Feels this situation is the exact opposite.
- Still no clear picture of what it is going to be.
- Refers to the agencies that are enabling the developer to be able to do this.

Mike Butterfield, Fishing Creek Road:

- Asks Mr. Corrado if he feels as though what is being offered right now is best case scenario.

Committeemember DeVico:

- States Mr. Corrado has already stated this to the committee.

Mayor Clark:

- Mr. Corrado stated that tonight.

Mike Butterfield, Fishing Creek Road:

- Applauds Mr. Corrado's due diligence.
- Asks if the builder's remedy, if awarded, is transferrable to another developer.

Frank Corrado:

- Not sure of the answer but does not believe it to be transferrable, but they might be.

Mike Butterfield, Fishing Creek Road:

- States that he appreciates the work all involved have put into the situation.

Bill Albrecht, Hoppy's Lane:

- Speaks to COAH and Mount Laurel.
- Asks if Middle Township may not be looking at situation with clear eyes.

Frank Corrado:

- Middle Township is the most at risk for low and moderate income housing due to population, open space and location.
- Could be forced to build double the number of units that it has now, in his opinion.

Bill Albrecht, Hoppy's Lane:

- Asks Mr. Corrado if he feels the township has a leg up in this fight.

Frank Corrado:

- Township is on the short end of the odds in the COAH lawsuit.
- Opinion would be different if township was not subject to the COAH lawsuit.

Sandy Cohn, Stage Coach Road:

- Asks if it would pay for the township to find feasible areas to build more units if they are ever required to do so.
- Spoke of other areas in town with dense population that could be used for development.

Committeemember Donohue:

- May be able to do that, but could not prevent it.

Frank Corrado:

- The township can zone areas to encourage low and moderate income housing.
- COAH was supposed to allocate numbers of houses to each municipality, but has not done so.

Sandy Cohn, Stage Coach Road:

- Asks if we could encourage the developer to build in a different area.

Frank Corrado:

- Doubts it; has spent years developing the project.

Mayor Clark:

- Speaks of the developer's relationship with his bank.

Committeemember Donohue:

- Sees Ms. Cohn's logic, but due to the bank partnership, does not see it working.
- The township approached the bank about trying to buy the land.

Sandy Cohn, Stage Coach Road:

- States she approached Mr. Ruckenstein about it and he was interested.

Dana Tyndall, Fishing Creek Road:

- Asks if there is a way to make sure he complies with ADA regulations.
- Concerned with "throwing people into the woods".

Committeemember Donohue:

- He is going through the state and several different boards.
- The Judge only hears about the zoning issue in Middle.

Dana Tyndall, Fishing Creek Road:

- Asks Committee if they can go outside of the "box".

Committeemember DeVico:

- We can try but the judge may say she does not want to do that.

Committeemember Donohue:

- Doesn't want to really get into discussing court because no one knows what is going to happen.

Dana Tyndall, Fishing Creek Road:

- Spoke of several issues including the initial application he made with Sandy funds, there is a section regarding developing that close to a dump.

Committeemember Donohue:

- Judiciary responsibility lies on the agency that he made application to.

Frank Corrado:

- States the developer still needs to live up to his promises.
- Needs to prove to these agencies that he has told the truth.
- Spoke to inconsistencies in the law that prevents the township from addressing certain concerns.

Dana Tyndall, Fishing Creek Road:

- *Questions those inconsistencies.*

Frank Corrado:

- *Cannot argue that it will financially affect residents.*
- *The township can argue the appropriateness of the location for this type of population.*
- *Cannot be discriminatory.*
- *Developer can argue that all he is after is the construction permit.*

Committeemember Donohue:

- *States the developer has the right to build from a zoning perspective.*

Frank Corrado:

- *Just going over the "frame work".*
- *Not stating he agrees with the developer.*

Judy Anderson, Fishing Creek Road:

- *Questions if Middle Township has a COAH representative.*
- *States she has been told every town should have one.*

Mayor Clark:

- *We do not.*
- *There are COAH attorneys, but has not heard of a COAH representative.*

Committeemember Donohue:

- *Middle always facilitated the process.*
- *Spoke to various housing programs in Middle Township.*
- *Expresses his concerns about COAH.*

Judy Anderson, Fishing Creek Road:

- *Questions if the community is capable in fighting a "Keith Davis" or if more help is needed and if the money should be spent for more help; feels the money should be spent.*

Committeemember Donohue:

- *Mr. Corrado has the responsibility to paint the scenarios as honestly as possible.*
- *Doesn't happen overnight.*
- *Takes two parties to settle.*
- *Notes that there could be residents whose taxes / schools could be impacted that are not affected by the new neighborhood.*

Judy Anderson, Fishing Creek Road:

- *Spoke to there being an expense to the township regardless of the outcome.*
- *Believes the township should look into abandoned homes within the township for COAH housing requirements.*

Committeemember Donohue:

- *That is not the role of the township; would be the role of the developer.*
- *The township will not buy properties.*

Mayor Clark:

- *Agrees to Committeemember Donohue's comments.*

Committeemember Donohue:

- *Spoke of trade-offs.*
- *Big players control it.*
- *Cannot change the facts.*

Dana Tyndall, Fishing Creek Road:

- *States she feels it's worth giving the state a call to see if there are COAH representatives in other towns.*

Committeemember Donohue:

- *The township had a COAH council for years which got the township through Conifer.*
- *Has not paid this person in the past year or so because there was no need to due to no COAH.*
- *Mr. Surenian was our COAH council.*

Mayor Clark:

- *Confirms Committeemember Donohue's comments for Ms. Tyndall.*

Dana Tyndall, Fishing Creek Road:

- *Questions if it is true that state law says you can develop housing without improved roadways.*

Frank Corrado:

- *States that the developer's argument is that the township's ordinance that requires the roads to go in first violates the state land use law.*

Dana Tyndall, Fishing Creek Road:

- *Asks Mr. Corrado to confirm if it does.*

Frank Corrado:

- *Confirms.*

Dana Tyndall, Fishing Creek Road:

- *Asks if there are cases where the courts will allow townships to have their own ordinance.*

Frank Corrado:

- *Ordinances cannot conflict with a state statute.*
- *Gave examples.*
- *Spoke to ordinances within the state that go against state law that have never been challenged.*

Committeemember DeVico:

- *Speaks to parking ordinances that are not legal.*

- Also notes that these ordinances have never been challenged.

Frank Corrado:

- Spoke to an ordinance in a neighboring township that is considered to be unconstitutional.

Dana Tyndall, Fishing Creek Road:

- Questions if the courts respect the municipality's decision or if they go by the book.

Frank Corrado:

- No black and white answer.
- If an ordinance is challenged, the courts are required to investigate if it violates a law or not.

Committeemember Donohue:

- Notes several large developers that work in the township that have never challenged the ordinance.

Dana Tyndall, Fishing Creek Road:

- Asks if the township can argue that the developer's bond may not cover everything.

Committeemember Donohue:

- Per the transcript, stipulations were made at the meeting by the developer that would allow the township to revise the bond as a condition of the approval.

Dana Tyndall, Fishing Creek Road:

- Asks if it should include ADA laws.

Committeemember Donohue:

- Believes it would but the Zoning Board did not entertain that.

Motion to Adjourn Meeting: 8:21pm

1st: Committeeman Donohue

2nd: Committeeman DeVico

Roll Call Vote: Committeemember DeVico, Committeemember Donohue, Mayor Clark

Kimberly D. Krauss, Township Clerk