

MINUTES
SPECIAL COUNCIL MEETING
TOWNSHIP OF MONROE
JANUARY 14, 2014

A.) OPENING CEREMONIES

CALL TO ORDER

The Special Council Meeting/Public Hearing on the 2014 Towers List of the Township of Monroe was called to order at 7:00 PM by **Council President, Ronald Garbowski** in the Joe Pace Meeting Room of the Municipal Complex located at 125 Virginia Avenue, Williamstown, New Jersey.

This meeting was advertised pursuant to the New Jersey Open Public Meetings Act (*NJSA 10:4-6 thru 10:4-21*). Notices were placed in the official publications for Monroe Township (i.e.: South Jersey Times, the Courier Post and the Sentinel of Gloucester County). A copy of that notice is posted on the bulletin board at the Municipal Complex.

SALUTE TO FLAG

Cncl. Sebastian led the assembly in the Pledge of Allegiance to our Flag.

ROLL CALL OF TOWNSHIP OFFICIALS

Cncl. Walter Bryson	Present	
Cncl. Frank Caligiuri		Excused
Cncl. Marvin Dilks	Present	
Cncl. Rich DiLucia	Present	
Cncl. William Sebastian	Present	
Cncl. Daniel Teefy	Present	
Cncl. Pres., Ronald Garbowski	Present	
Solicitor Charles Fiore	Present	
Business Administrator, Kevin Heydel	Present	Arrived 7:20PM
Municipal Clerk, Susan McCormick	Present	

PUBLIC HEARING - 2014 TOWING LIST

Also, in attendance for this matter was **Officer, Mark Burton** – MTPD Traffic Division

Prior to the opening of the "*Public Hearing*" **Solicitor, Charles Fiore** explained the purpose of advertising this meeting as a "Special Council Meeting" was to address the towing list, specifically one of the towers that had previously been approved for the 2014 Towing List. Mr. Fiore then proceeded to explain just by way of procedurally putting on the record his recollection/recitation of the occurrence of the facts since the application process started in the fall of 2013. At the direction of Council, outside the scope of the ordinance (*not required via ordinance*), on September 23, 2013, I forwarded to all of the towers on the list from last year, and the other applicants who were unsuccessful in being placed on the list a copy of the current ordinance (*Chapter 262*), copy of the checklist that was utilized by the police department as part of the application process, as well as a "Hold Harmless" agreement. He explained although this was stated in the ordinance as part of the requirements, it was not enforced last year. In attempting to move forward to address the concerns of everyone and the consensus of some of the towers (*not placed on the list last year*) that they were not notified of some deficiencies (*although not noted in the ordinance*) as part of fundamental fairness it was agreed upon by Council to move forward and give them an early opportunity to make sure everything was submitted properly. The solicitor continued and noted the application was due on November 1st. Everyone submitted their applications in a timely fashion, they were forwarded to the police department. The police department then did their inspections and through the Director of Public Safety there was a recommendation to Council at the time to put seven (7) towers on the list for 2014. On December 9, 2013 by way of Correspondence (*not via resolution*), it was approved to move forward the seven (7) towers that were recommended by the Director of Public Safety and the Police Department. Subsequent to that, I received an

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email on December 23, 2013 from Counsel, on behalf of one of the towers, indicating that it was his belief that five (5) of the seven (7) towers, for various reasons did not comply with the ordinance (*many reasons set forth as to individual towers*). At the Regular Council Meeting of December 23rd based upon the fact there was threatened further litigation I circulated this email to Council marked "CONFIDENTIAL" and recommended that they not comment on it that particular evening. This way there was an opportunity to look into it and respond. Mr. Fiore then went on to note he checked with various township employees and officials who were part of the review process, than sent a letter back to Counsel on behalf of one of the towers and dated December 30, 2013 (*emailed to Michael Sweeney, Counsel*) indicating we had reviewed everything. Mr. Fiore continued and advised that Cecil Collision was in compliance, Clark's Auto was in compliance as there was an issue as to the payment of taxes, B&H was in compliance, Lake Avenue was pending further review, B&B was in compliance so therefore we were going to move forward with the towing list, as it exists. Mr. Fiore noted there was a "Special Council Meeting" scheduled prior to the Ordinance Committee Meeting last week (*Wednesday, January 8, 2014*). The Solicitor then noted there was a discussion in Closed Executive Session regarding the assertions that were set forth in both the prior letter and my response. He believed this matter was appropriate for Executive Session review based upon the threat of further litigation involving the towing ordinance and towing list. Mr. Fiore explained there was a discussion, at that point in time, with respect to the process that would be involved in potentially maybe removing someone from the list that had already been approved. He noted the code (*township ordinance*) is silent to that. He continued whenever you are looking at any type of potential removal from the list or penalizing someone in any fashion no matter what it is (*towing list, junkyard license, etc.*) you must utilize some type of fundamental due process. You cannot just remove someone from a list because of an allegation, you must look into it, and most importantly, you have to give an opportunity to be heard with respect to potential action that may be taken. Under the ordinance, if someone is on the list and he or she are going to be removed at some point in time for some type of violation there is a ten day prior notice provision however, that is really not applicable to this. This is somewhere in between and this is where an attorney sometimes has to use their ingenuity and try to exercise or recommend that the governing body utilize some type of due process. Mr. Fiore stated that at the direction of council members, again, there was no action taken, there was a recommendation based upon legal discussion. Letters were sent out to six (6) of the seven (7) towers indicating that they were not going to be removed from list as there were no issues as far as the township was concerned as to whether or not they should be on the list. Mr. Fiore continued and noted the only individual sent a notice was Lake Avenue and Mr. Weeast who was in attendance received "Notice" as to why he was coming here. The two (2) fundamental issues that were addressed in the letter, which perhaps Mr. Weeast can address during the public hearing, first there was an issue as to the inspection sticker. He added back when Officer Burton was performing the inspection there was a red sticker (*failed inspection*). The second issue was regarding the protective fence that would mirror it (*yard*) from the state highway. Mr. Fiore added there was discussion on this and he mentioned at the time of the closed session our ordinance somewhat mirrors the state statute as it applies to Junkyard Licenses and he knew that particular language is partially taken from the statute dealing with Junkyard Licenses. Under NJ State Statute, there is a provision that if you are less than 1,000 ft. from a state *highway*, or if you were a primary roadway that you must have some type of protective/security fence that shields the business from the highway. The solicitor indicated that we kind of minimized that, if you will, and indicated that if you were within 1,000 ft of highway you must have slats or a privacy fence and the interpretation came down whether *highway* meant the Black Horse Pike. He felt if you compare it to the language of the statute *highway* is a state, county or major highway. He continued questioning would Lake Avenue be considered a *highway* for the purposes of definition, in his opinion not, maybe in another attorneys opinion, yes and he was unsure of a judge's opinion. He stressed based upon our discussions, we were all satisfied that Mr. Weeast had appeared to address this, therefore it did not become an issue. Mr. Fiore continued, indicating one of the other interpretations could be, does it have to include the entire yard. The ordinance is somewhat vague in that regard and he did feel he (*Weeast*) should be penalized by that vagueness (*fundamentally fair*). The other issue deals with the inspection sticker and again, Mr. Weeast, during the public hearing can speak on this.

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Solicitor Fiore then advised council members that as council people you have the right to address any questions that come up but based upon the threat of potential litigation in this case he asked that they limit their comments to the concerns of Mr. Weeast. The solicitor noted that certainly, during the public hearing, which, in fact, was a first in Monroe that being, a public hearing regarding an individual on the towing list that had been approved and now is perhaps being taken off the list. Again, this is a first so we have to be somewhat legally creative from the standpoint on how it is going to proceed. Mr. Fiore explained it was going to proceed as a regular hearing and if anyone from the public had questions they were to put their name on the record, ask their question, then give an opportunity for a response. He stressed it must be in an orderly fashion as there was a record being created. Again, Mr. Fiore advised the purpose of the "public hearing" is limited as to whether or not Mr. Weeast should remain on the 2014 towing list. He added, he (*Weeast*) was approved, he was on the list, and this item was brought up as an afterthought. In the past, we talked about what was the fundamental purpose of the ordinance, which is to get vehicles off the roadway expeditiously and in a safe fashion.

Cncl. William Sebastian, noted for the record that the inspection sticker previously referred to as a *failed* sticker, was actually an *expired* sticker.

PUBLIC HEARING

Cncl. Walter Bryson made a motion to open the Public Hearing on the 2014 Towing List. The motion was seconded by **Cncl. William Sebastian** and unanimously approved by all members of Council in attendance.

At this time, it was requested that Mr. Weeast raise his hand and state his name for the record. He was then sworn in by **Solicitor Charles Fiore**.

Tom Weeast – 81 Lake Avenue (*Lake Avenue Auto Body*) approached council and advised that he forgot about the inspection sticker, which is something we have all done. However, that was besides the point, I didn't have just one vehicle to be inspected by the police (*township*) I had several vehicles to be inspected. Mr. Weeast noted that he could not see how you can knock off an individual from the tow list because one of the vehicles had an inspection sticker that was overdue and then stressed it had been taken care of. He was not sure of the legalities, but usually what would happen is that one truck would fail and at a later date the police would come out and re-inspect it and if it passed, it would be approved. Mr. Weeast then noted secondly, as far as the privacy fence goes, I put privacy fence up long before the township ordinance. He did that to keep Lake Avenue Auto Body not looking like a body shop and he then indicated that it is installed across the whole front on the Black Horse Pike and about one quarter on both sides and that was done a long time prior to this ordinance. He then brought up something he had a little bit of a problem with, that being we had to separate the yard into two (2) separate yards so that we could keep at least ten (10) township vehicles totally by itself. He added that is OK if you have acres but if you don't it is not the right way to do it, and it is not the right way to run a business. He then stressed that he did do this. He felt that council should not be involved with the way he runs his business. Mr. Weeast verified that the truck has been inspected and he did offer his apologies for that. In addition, he advised he did put the privacy fence all the way around that particular property. He didn't think he had to, the way the ordinance is written, it says the full length of the property, it doesn't say the full perimeter of the property, if it had said perimeter he would have done perimeter. Mr. Weeast indicated that was pretty much what he had to say and offered to respond to any questions.

Cncl. Bryson questioned how many towing vehicles he had. Mr. Weeast responded, two (2) and the one that passed inspection is qualified to tow 2 vehicles. Mr. Weeast added that once we did not have towing last year, he didn't pay too much attention to the stickers and stuff like that, he looked at them all the time but didn't realize the one was expired.

Cncl. Dilks questioned the inspection of the truck, who does the inspection and if it was onsite. Mr. Weeast replied it was inspected by the MTPD on site.

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Cncl. Sebastian for point of clarification questioned if the inspection by the police department is what is required by the ordinance. Mr. Weeast replied, yes. **Cncl. Sebastian** noted it is not a state inspection of your vehicle, that when they came out and inspected the vehicles it was to see if you met the requirements of the ordinance, not the condition of the truck. Mr. Weeast replied, right.

Cncl. Bryson questioned the solicitor, if there was anything in the ordinance that specified the number of trucks. The solicitor responded, no. Mr. Weeast then indicated he could answer that, the ordinance says you have to be able to tow 2 vehicles. The solicitor noted it does not say the number of vehicles the tower must have. Mr. Weeast then elaborated and advised he has been doing towing for some twenty-eight years and always felt more comfortable having a back-up vehicle.

Michael Sweeney, Attorney (Lyman & Ash) on behalf of Jack Simmermon noted the ordinance is very specific and it was adopted in 2007 and put a bright line for the date of application which is November 1st when everything must be satisfied. Those checklists that have constantly circulated, this is not the second grade, the council has been through a lawsuit already. This is standard, this ordinance is specific and everyone must qualify, everyone must meet all of the qualifications. If people are treated differently, if people are treated dissimilarly one towing company from another, if you are giving leeway to one company and you haven't given leeway to another that is equal protection and the solicitor can explain that to you, if you didn't learn that over the last couple of years. Mr. Sweeney then noted that is why he was here. **Solicitor Fiore** then advised we are not going to comment because the gentleman is getting up and indicating he wants me to explain the legal principle of equal protection, translation he intends on filing suit. Mr. Fiore then suggested that none of the council people comment, we all know what equal protection is and the gentleman, on behalf of his client, is threatening to sue. So no comments, please. **Mr. Sweeney** then directed a question to the solicitor if he shared his (*Sweeney*) email of Monday, December 30th 6:15PM that he acknowledged receipt of. Mr. Fiore responded, yes. Mr. Sweeney then noted that he did address other issues besides Lake Avenue. Mr. Fiore then noted for the record we addressed all of those.

Mr. Weeast then noted that he did not believe the ordinance included anything on inspection stickers. Mr. Fiore indicated, no it does not.

With no one else wishing to make comment Cncl. Marvin Dilks made a motion to close the Public Hearing on the 2014 Towing List. The motion was seconded by Cncl. Walter Bryson and unanimously approved by all members of Council in attendance.

Solicitor Charles Fiore then advised council members would basically have to decide whether there is going to be a motion to take *no further action*, or take action to remove Mr. Weeast from the towing list. Council has one of two options.

Cncl. Marvin Dilks made a motion to take no further action and that the towing list previously approved would remain intact. The motion was seconded by **Cncl. Walter Bryson** and unanimously approved by all members of Council in attendance.

B.) GENERAL PUBLIC DISCUSSION

Cncl. Sebastian made a motion to open the General Public Discussion. The motion was seconded by **Cncl. Dilks** and unanimously approved by all members of Council in attendance.

Christopher Cugini - 1814 Watercress Court noted he was in attendance, not on behalf of anyone, strictly for himself. He noted that he recently saw an accident along the Black Horse Pike where the driver of a vehicle got wedged under a truck and unfortunately, he was deceased. Mr. Cugini noted his problem was if something like that happens again and someone is alive in a car but the EMT's cannot get to him and the first guy that shows up does not have the proper equipment to pick up the truck, what do we do then? The solicitor posed a question, as Mr. Cugini had commented on that previously. Is the EMT procedure that the tower is going to pick up the vehicle? Or does the EMT

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B.) GENERAL PUBLIC DISCUSSION (cont'd)

personnel perform the extraction? There was discussion back and forth on this between the solicitor and Mr. Cugini. Mr. Cugini felt the township should take a look at this, through the ordinance. Mr. Fiore added that the fire department just asked for that type of equipment (*rescue*). **Cncl. Sebastian** advised the rescue team has the new lift jacks. Business Administrator, Kevin Heydel noted that he thought it would be the responsibility of public safety to do the extraction. This would be due to possible litigation matters that could arise from someone not being a first/emergnecy responder.

Dan Heller - B&H Auto & Truck Repair - Gabby's Lane approached council to speak on how most towers have tow trucks to enhance their business; there is not a pure tower in here. We all have businesses such as auto repairs, auto body, recycling yards but there is nobody who is precisely just a tower and does nothing else. Mr. Heller continued to say that all we keep hearing is you have to be a professional tower and must have certifications. Mr. Heller added you must also have certifications when you are in the business of auto repair, body shops, and even with recycling yards there are many licenses/certifications that must obtained. All we really want to do is make a living and we go out and do this (*tow*) as quickly and safely as we can. The people with bigger equipment, they should be called upon when there is something big. Mr. Heller continued saying I know if I go out and the job is too big, I know who has to be called as I can't afford to go out and buy that equipment. Previously, he did look into buying additional equipment but this area doesn't call for me to go out and buy it. Mr. Heller continued to say God Bless him if he has the equipment. The rest of us are just trying to make a living and that is what we do, it enhances our business.

Mary Cote - 1710 Biden Lane voiced her concerns with regard to council's decision. She questioned, are we willing to go into another lawsuit, are we willing to spend taxpayer's money? While I understand everyone needs to make a living here, I do think we need to look at all avenues with regard to this, we need to look into the safety of the vehicles and who can do what. Mrs. Cote noted we did just have a tax increase that cost everyone a little bit more money and everyone here pays the same taxes, this affects all our residents.

Cncl. Sebastian made a motion to close the General Public Discussion. The motion was seconded by **Cncl. Bryson** and unanimously approved by all members of Council in attendance.

C.) ADJOURNMENT

With nothing further to discuss **Cncl. Marvin Dilks** made a motion to adjourn the Special Council Meeting of January 14, 2014. The motion was seconded by **Cncl. Richard DiLucia** and unanimously approved by all members of Council in attendance.

Respectfully submitted,


Susan McCormick, RMC
Municipal Clerk


Presiding Officer

These minutes were prepared from excerpts of the tape-recorded proceedings of the Special Council Meeting of January 14, 2014 and serve as only a synopsis of the proceedings. The official tape may be heard in the Office of the Township Clerk upon proper notification pursuant to the Open Public Records Law.

Approved as submitted _____ Am _____
Approved as corrected _____

Date 1/27/14
Date _____