

Municipal Building
1200 Mountain Avenue

October 13, 2009

A regular meeting of the Mayor and Council was held at the above place on the above date commencing at 7:00 p.m.

Mayor John Fuhrmann
Council President: Bob Schueler
Michael Class
Debra DeVuyst
Bob Edwards (absent)
Bob Gorr
Michael Venuto (absent)

Attorney: Edward Johnson

Mayor Fuhrmann opened the meeting with the Sunshine Law Statement saying the meeting had been advertised in the Public Meeting Notice of December 31, 2008.

Mayor Fuhrmann read the following resolution:

BE IT RESOLVED by the Mayor and Council of the Borough of Middlesex that:

**Resolution #209-09
Amending capital budget**

WHEREAS, the local capital budget has been adopted for the year 2009; and

WHEREAS, it is desires to file a temporary capital budget for the year 2009 prior to the adoption of the capital budget.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Borough Council of the Borough of Middlesex, County of Middlesex, that the temporary capital budget be amended for the estimated total cost of \$799,800, with the amount of \$501,810 debt authorized.

Councilman Schueler moved for adoption, seconded by Councilman Gorr and carried by the following roll call vote: Ayes: Members Class, DeVuyst, Gorr, and Schueler. Nos.: None. Abstain: None.

Mayor Fuhrmann read Ordinance No. 1754-09 for introduction:

ORDINANCE NO. 1754-09

**BOND ORDINANCE PROVIDING FOR VARIOUS CAPITAL IMPROVEMENTS OF
THE BOROUGH OF MIDDLESEX, IN THE COUNTY OF MIDDLESEX, NEW JERSEY,**

**APPROPRIATING THE AGGREGATE AMOUNT OF \$788,200 THEREFOR AND
AUTHORIZING THE ISSUANCE OF \$490,790 BONDS OR NOTES OF THE
BOROUGH TO FINANCE PART OF THE COST THEREOF.**

Councilman Schueler moved for introduction, seconded by Councilman DeVuyst and carried by the following roll call vote: Ayes: Members Class, DeVuyst, Gorr, and Schueler. Nos.: None. Abstain: None.

The Mayor read Ordinance No. 1752-09 by title saying it had been posted on the bulletin board and made available for any person who wanted a copy.

ORDINANCE NO. 1752-09

**AN ORDINANCE ESTABLISHING SEWER USER CHARGES BY FLOW,
BIOCHEMICAL OXYGEN DEMAND, SUSPENDED SOLIDS AND CHLORINE
DEMAND**

Mayor Fuhrmann opened the public hearing on Ordinance No. 1752-09. Seeing that there was no public participation, Mayor Fuhrmann closed the public hearing on Ordinance No. 1752-09.

Councilman Schueler moved for adoption, seconded by Councilwoman DeVuyst and carried by the following roll call vote: Ayes: Members Class, DeVuyst, Gorr, and Schueler. Nos.: None. Abstain: None.

The Mayor read Ordinance No. 1753-09 by title saying it had been posted on the bulletin board and made available for any person who wanted a copy.

ORDINANCE NO. 1753-09

**AN ORDINANCE AMENDING THE PROPERTY MAINTENANCE CODE OF THE
BOROUGH, SECTION 317-11 OF THE OFFICIAL CODE OF THE BOROUGH**

Mayor Fuhrmann opened the public hearing on Ordinance No. 1753-09.

Frank Ryan, 303 Maple Street questioned the amendment to the ordinance. He was at a meeting in April with pictures of Burger Tubing and Jim Rinker went out to have the place cleaned up, and now it looks the same, and the shrubbery is as high as the roof. What is the borough's follow up procedure on these complaints, and can we include in our code that you would have 3 days to correct the problem. He also said that again there are cars at the Getty Station that are for sale. He wants to know when do we do something, because he was hoping there would be real enforcement.

John Fuhrmann indicated that he knows Mr. Rinker reached out to Burger Tubing, and he is awaiting a response. The Mayor indicated that Jim Rinker is on top of his game and will do whatever he needs to do to get the property cleared up, but we do still need to toughen up the code enforcing.

Seeing that there was no further public participation, Mayor Fuhrmann closed the public hearing on Ordinance No. 1753-09.

Councilman Class made a motion to amend the ordinance to include Paragraph 5 addressing garbage and rubbish and the enforcement by the code enforcer or his designee seconded by Councilwoman DeVuyst and carried by a unanimous vote of Council.

Councilman Class moved for adoption as amended seconded by Councilwoman DeVuyst and carried by the following roll call vote: Ayes: Members Class, DeVuyst, Gorr, and Schueler. Nos.: None. Abstain: None.

Mayor Fuhrmann opened the public portion of the meeting for discussion regarding any of the resolutions on the public consent agenda.

Seeing that there were no public comments, Mayor Fuhrmann closed the public portion of the meeting on the consent agenda.

Mayor Fuhrmann read the following resolution:

BE IT RESOLVED by the Mayor and Council of the Borough of Middlesex that:

Consent Agenda 2009(Q)

WHEREAS, the Mayor and Council of the Borough of Middlesex has reviewed the Consent Agenda consisting of various proposed resolutions; and

WHEREAS, the Mayor and Council of the Borough of Middlesex are desirous of removing Resolution #217-09 from this Agenda.

NOW THEREFORE BE IT RESOLVED, by the Mayor and Council of the Borough of Middlesex, County of Middlesex, State of New Jersey that the following resolutions on the Consent Agenda are hereby approved and adopted.

Resolution #210-09 – Resolution #211-09
Resolution #213-09 – Resolution #216-09
Resolution #218-09 – Resolution #219-09

Councilwoman DeVuyst made a motion for approval, seconded by Councilman Schueler and carried by the following roll call vote: Ayes: Members Class, DeVuyst, Gorr, and Schueler. Nos.: None. Abstain: None.

Mayor Fuhrmann read the following resolution:

BE IT RESOLVED by the Mayor and Council of the Borough of Middlesex that:

Resolution #210-09

Approving the appointment of Cheryl Devaney, 529 Howard Avenue, James Green, Sr. 67 Hampton Gardens and Kenneth Larson, 5 Venice Avenue as school crossing guards for the Borough of Middlesex at a salary of \$13.50 per hour. All three of these individuals have met all of the requirements for the position.

Mayor Fuhrmann read the following resolution:

BE IT RESOLVED by the Mayor and Council of the Borough of Middlesex that:

Resolution #211-09

Refunding \$20.00 to Our Lady of Mt. Virgin School, 450 Drake Avenue, Middlesex, New Jersey for Raffle Application No. 666 which has been rejected by Legalized Games Control Commission.

Mayor Fuhrmann read the following resolution:

BE IT RESOLVED by the Mayor and Council of the Borough of Middlesex that:

Resolution #213-09

The tax collector is hereby authorized to issue a check in the amount of \$18,530.58, to redeem tax sale certificate 2007-1691, check is to be made payable to:

CCTS Tax Liens I LLC
1913 Greentree Rd
Cherry Hill, NJ 08003

The Certificate covered property located at 146 Lincoln Blvd., Block 129, Lot 2.

Mayor Fuhrmann read the following resolution:

BE IT RESOLVED by the Mayor and Council of the Borough of Middlesex that:

Resolution #214-09

WHEREAS, The Mandatory Source Separation and Recycling Act, P.L.1987, c.102, has established a recycling fund from which tonnage grant may be made to municipalities in order to encourage local source separation and recycling programs; and

WHEREAS, It is the intent and the spirit of the Mandatory Source Separation and Recycling Act to use the tonnage grants to develop new municipal recycling programs and to continue and to expand existing programs; and

WHEREAS, The New Jersey Department of Environmental Protection has promulgated recycling regulations to Implement the Mandatory Source Separation and Recycling Act; and

WHEREAS, The recycling regulations impose on municipalities certain requirements as a condition for applying for tonnage grants, including but not limited to, making and keeping accurate, verifiable records of materials collected and claimed by the municipality; and

WHEREAS, A resolution authorizing this municipality to apply for the 2008 Recycling Tonnage Grant will memorialize the commitment of this municipality to recycling and to indicate the assent of the Borough of Middlesex to the efforts undertaken by the

municipality and the requirements contained in the Recycling Act and recycling regulations; and

WHEREAS, Such a resolution should designate the individual authorized to ensure the application is properly completed and timely filed.

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the borough of Middlesex that the borough of Middlesex hereby endorses the submission of the recycling tonnage grant application to the New Jersey Department of Environmental Protection and designates the Recycling Coordinator, Anthony Patrick, ensure that the application is properly filed; and

BE IT FURTHER RESOLVED that the monies received from the recycling tonnage grant be deposited in a dedicated recycling trust fund to be used solely for the purposes of recycling.

Mayor Fuhrmann read the following resolution:

BE IT RESOLVED by the Mayor and Council of the Borough of Middlesex that:

Resolution #215-09

BE IT RESOLVED, by the Mayor and Council of the Borough of Middlesex, New Jersey that the disbursing officers be and are hereby authorized to refund escrow monies to close the following escrow accounts:

BLOCK/LOT	NAME	AMOUNT	ACCOUNT #
85/1	Ralph Reilly 7 Greenbrook Rd	\$ 196.70	7760142392

including interest to date of refund.

Mayor Fuhrmann read the following resolution:

BE IT RESOLVED by the Mayor and Council of the Borough of Middlesex that:

Resolution #216-09

The governing body hereby requests from the New Jersey Department of Transportation a six (6) month extension of time (from June 19, 2010 to December 19, 2010) for the Transportation Trust Fund Grant for the construction of Beechwood Avenue – Section II, Municipal Aid – Fiscal Year 2009 Project.

Mayor Fuhrmann read the following resolution:

BE IT RESOLVED by the Mayor and Council of the Borough of Middlesex that:

Resolution #218-09

WHEREAS, N.J.S.A. 10:4-12 allows for a Public Body to go into closed session during a Public Meeting; and

WHEREAS, the Governing Body of the Borough of Middlesex has deemed it necessary to go into closed session to discuss certain matters which are exempted from the Public; and

WHEREAS, the regular meeting of this Governing Body will reconvene.

NOW, THEREFORE, BE IT RESOLVED that the Governing Body of the Borough of Middlesex will go into closed session for the following reason listed below as outlined in N.J.S.A. 10:4-12 and the minutes will be kept, and once the matter involving the confidentiality of the items no longer require confidentiality, the minutes can be made public.

Negotiations

- PBA
- DPW
- White Collar

Personnel

- Former Employee – Community Service Request

Mayor Fuhrmann read the following resolution:

BE IT RESOLVED by the Mayor and Council of the Borough of Middlesex that:

Resolution #219-09

THE DISBURSING OFFICERS BE AND THEY ARE HEREBY AUTHORIZED TO PAY THE ATTACHED CLAIM LIST AS PRESENTED, IF FOUND CORRECT, AND APPROVED BY THE FINANCE COMMITTEE. EXCLUDED VOUCHERS MAY BE PAID UPON BEING FOUND ACCEPTABLE.

Mayor Fuhrmann read the following resolution:

BE IT RESOLVED by the Mayor and Council of the Borough of Middlesex that:

Resolution #217-09

RESOLUTION AUTHORIZING THE BOROUGH OF MIDDLESEX TO ENTER INTO A NEW CONTRACT WITH THE LOCAL 255, UNITED SERVICE WORKERS UNION, TRANSPORTATION COMMUNICATIONS UNION, AFL-CIO, CLC FOR THE PUBLIC WORKS EMPLOYEES OF THE BOROUGH OF MIDDLESEX COVERING THE PERIOD FROM JANUARY 1, 2009 THROUGH DECEMBER 31, 2011

WHEREAS, The Borough of Middlesex has previously entered into a contract with Local 255, United Service Workers Union, Transportation Communications Union,

AFL-CIO, CLC, pursuant to the provisions of Chapter 303, Public Laws of 1968 and its successors covering all employees in the Borough's Public Works Department; and

WHEREAS, the previous contract between the parties covered the four (4) year term from January 1, 2006 through December 31, 2008; and

WHEREAS, the parties have been engaging in good faith negotiations during the present year in an effort to agree upon terms and conditions for a successor agreement; and

WHEREAS, the parties have agreed to implement new terms and conditions in connection with the contract between the parties hereto; and

WHEREAS, the members of the Middlesex Borough Department of Public Works are aware of current economic conditions which preclude the Borough from giving them the raise which they have been accustomed to receive in the past and the members of the Department of Public Works are also aware that any increase in salaries given to them this year will reflect upon and become a burden upon to the taxpayers of the Borough and they have therefore agreed to work with the members of the Governing Body in order to help keep any tax increases as small as possible; and

WHEREAS, as a result of negotiations between the parties, the parties have agreed to enter into a new labor contract which will cover a term of three (3) years, retroactive to January 1, 2009 which will extend through December 31, 2011; and

WHEREAS, a copy of the proposed agreement amending the employment contract between the Borough of Middlesex and the Public Works Employees is attached hereto and made a part hereof; and

WHEREAS, The Governing Body has determined that it is in the best interest of the residents and taxpayers of the Borough for the Borough to enter into this agreement;

NOW THEREFORE, be it resolved by the Council of the Borough of Middlesex as follows:

- 1 The Mayor is hereby authorized to enter into an agreement between the Borough of Middlesex and the Public Works Employees amending the previous employment contract between the parties which will be retroactive to January 1, 2009 and which will run through December 31, 2011, a copy of which agreement is attached hereto and made a part hereof.
2. This Resolution shall take effect immediately.

Councilwoman DeVuyst made a motion for approval, seconded by Councilman Schueler and carried by the following roll call vote: Ayes: Members Class, DeVuyst, and Schueler. Nos.: Gorr. Abstain: None.

Mayor Fuhrmann opened the public portion of the meeting.

Jeff Buccellato, 313 Beechwood Avenue mentioned that he heard about a discussion at the last meeting with T&M Associates regarding the escrow bills. Mr. Buccellato

indicated that he sat down with the former mayor and the town engineer to review a bill he was sent for \$3200 and wanted justification for the bill. He stated that nothing was done for 6 months. He mentioned that after he came in, Len Miller called him and questioned what was going to be done with the bill for \$3200 for the review regarding Drake Avenue. Mr Buccellato indicated that they charged \$3200 for 40 hours to look at one paper. He questioned if he has to plead with these bills in the future?

Mayor Fuhrmann indicated that we are trying to establish a routine to handle these complaints. We are attempting to come off with a way to be aware of these complaints and working it out through our office. Mayor Fuhrmann stated that we realize that there is a problem, and we are going to address it.

Councilman Class indicated that when the developer goes directly to the engineer, the borough has no way of knowing it, and there is a process that the county handles, that is being ignored. Councilman Class indicated that T&M should know this process and how it works. Mr. Class stated that the Borough presently has a stack of outstanding bills from developers.

Mr. Buccellato questioned if Beechwood Avenue would be repaved in the front of his property. Mayor Fuhrmann indicated that the grant for the paving for Beechwood Avenue, which would include from Shepherd to Dorn has been extended this evening, and it gives the council an additional 6 months to decide if they would like to move on this project.

Ed Johnson indicated that when they make reports to the boards that they give an invoice to the applicant so they know what the cost is. Because of that the applicant has an opportunity to find out what he is being charged. If not satisfied with that they have 2 choices, either you can work it out between the parties and then file an appeal to the county. Most of the times there is usually some kind of accommodation and it gets resolved without going to the County. Ed Johnson wrote a letter to T&M and indicated that it was the position of the governing body that they do not negotiate with the borough, just to go to the county.

Phil Lopa, Chairman of the Board of Adjustments indicated that in statute 40:55SD-53.2A under the Municipal Land Use Ordinance the applicant shall notify the governing body in writing with copies to the CFO whenever the applicant disputes the charges. If not resolved to satisfy the applicant, then they can go to the county.

Frank Ryan, 303 Maple Street mentioned that on Lincoln Boulevard, if you look to your right going to Bound Brook there is a drill machine. Do we know what that drill is doing and can we find out what it is doing?

Mike Florczyk, 29 Orchard Road spoke regarding the flooding that happened on October 12, 2009 in his basement. The Mayor and Ron Dobies came out to see the flooding and Mr. Florczyk indicated that they hired a firm to clean up all the raw sewage. He is concerned because he received a bill for \$1,500 for today's clean up and they said that they will be back tomorrow and might need more time to clean up the sewage. This company wants to be paid, and he wanted guidance of what he should do with the borough paying. The company keeps pushing them to do more work and he has been advised by the Board of Health that everything that the sewage touches should be

ripped out. He has contacted his homeowner's insurance company and they have refused to cover.

Mayor Fuhrmann feels that Mr. Florczyk should get a cost estimate to make the repairs and in the meantime we will pursue the MCMJIF who can also proceed under the maintenance bond for the reconstruction of Orchard Road.

Councilman Schueler suggested that Mr. Florczyk put his homeowner's insurance company on notice in writing and indicated that there is an Unfair Claims Settlement Act which puts a time frame on a settlement and when they have to do it. They are required to settle a claim within 30 days or claim why they can't. There are rules and regulations which insurance companies have to abide by and he may want to contact the Department of Insurance Banking.

Mr. Johnson recommended that Mr. Florczyk's claim be filed in writing. Payment of the bills is not a decision that this council can make, we can only report it to our insurance company.

Mike McGinley, Douglas Lane indicated that he felt that if someone was working in the street cleaning out sewers why do you think your insurance company is going to pay that claim. He feels that no insurance company on the face of this earth is going to pay this claim, because it doesn't make sense.

Seeing that there was no any further public participation, Mayor Fuhrmann closed the public portion of the meeting.

Councilman Schueler moved to approve the July 7, 2009 Agenda Meeting Minutes as amended, August 11, 2009 Regular Meeting, August 18, 2009 Agenda Meeting Minutes and the August 25, 2009 Regular Meeting Minutes, the September 1, 2009 Agenda Meeting Minutes and the September 8, 2009 Regular Meeting Minutes and September 15, 2009 Agenda Meeting Minutes, September 22, 2009 Public Meeting Minutes and September 30, 2009 Special Meeting Minutes seconded by Councilman Gorr.

Councilwoman DeVuyst moved to amend the above motion to remove the approval of the July 7, 2009 Agenda Meeting Minutes, August 11, 2009, Public Meeting Minutes and September 22, 2009 Public Meeting Minutes seconded by Councilman Class and carried by a unanimous vote of Council.

Councilman Schueler moved to amend the original motion as amended to approve the minutes of the August 18, 2009 Agenda Meeting Minutes, August 25, 2009 Regular Meeting Minutes, September 1, 2009 Agenda Meeting Minutes, September 8, 2009 Regular Meeting Minutes, September 15, 2009 Agenda Meeting Minutes and September 30, 2009 Special Meeting Minutes as amended, seconded by Councilman Class and carried by a unanimous vote of Council.

Councilman Class moved to approve the July 7, 2009 Agenda Meeting Minutes seconded by Councilwoman DeVuyst and carried by the following roll call vote: Ayes: Members Class, DeVuyst, and Fuhrmann. Nos.: Gorr and Schueler. Abstain: None.

Mayor Fuhrmann indicated that the Council will defer action on the approval of the August 11, 2009 Public Meeting and the September 22, 2009 Public Meeting until the October 27, 2009 Public Meeting so that they can be reviewed with the Borough Attorney.

Councilman Class moved the approval of the August, 2009 and September, 2009 Municipal Court Report seconded by Councilman Gorr and carried by a unanimous vote of Council.

Councilman Class made the following statement:

On October 8th I asked Borough Clerk Kathleen Anello if I might have a copy of the executive session minutes from August 11th. Our Clerk told me that she would need a day or so to put together the minutes in draft form and I could pick up the requested minutes the following day. On October 9th I received a call from our borough clerk informing me that my minutes were ready for me to pick up at her office.

When I arrived at borough hall to pick up the minutes our clerk was in a meeting with borough attorney Edward Johnson by phone, Councilman Robert Edwards, and Business Administrator Ronald Dobies. There was clearly an issue with me receiving the minutes that I requested without consulting the borough attorney, which confused me since I pick up regular meeting recordings occasionally for minutes that re not yet approved without issue.

After the "group" consulted with the borough attorney I was presented with a draft copy of the meeting minutes requested and a letter from me to sign acknowledging receipt of the minutes that I refused to accept. Promptly the borough clerk told me that our attorney required that I signed this document per the "groups" discussion. The clerk then dialed Attorney Johnson again where I told him that I had no intention of signing anything and that I was entitled to the minutes as recorded by the borough clerk. The attorney continued and said that unless everyone received a copy of the minutes I would have to sign the document. At this point the decision was made to distribute the minutes to all off the council.

I would like to state that I am personally insulted that the Business Administrator Ronald Dobies, Councilman Robert Edwards, and Borough Attorney acted in collusion to control the means by which I received documentation that as a council person I am entitled to. Secondly, if there was any question of the legality of my request I should have been contacted and involved in the discussion rather than having to confront our attorney after a decision has been made on the matter. There is no supporting law, or borough policy that requires my signature for receipt of minutes requested. It is my wish that the council be aware of the situation and that we work together to make sure that this mis understanding does not take place again.

During the process to obtain documentation requested I have learned that council never approves our closed session meeting minutes, for reasons unknown. I am outraged that most closed session meeting minutes in the past years have yet to be approved by the council. To be clear, the Middlesex Borough council has not approved many of the recorded closed session meetings in the past 10 years or more.

As noted in the "New Jersey's Open Public Meeting Act "The Sunshine Law" under the section "MINUTES" it states:

Minutes must be kept of closed sessions. The minutes should start with a statement of the time, place and manner of notice, or in the case of an emergency meeting, a statement sufficient to satisfy the emergency meeting notice requirements. Minutes should show, at a minimum, the names of the members present, individual votes of each member, subjects considered and actions taken. Minutes must be promptly made available once the necessity of the closed session has passed.

Not approving closed session meeting minutes after all items are deemed open to the public is my opinion a violation of the sunshine law. A reluctance to approve closed session minutes could only be construed as a means to hide the conduct of public officials and to ignore closed session meeting requirements leaving discussion open for any topic. The residents have a right to know what their elected officials are doing and saying during these meetings. The public has demanded transparency and this exact situation is why the Sunshine Law exists.

After reviewing the August 11th closed session meeting minutes there is overwhelming evidence, in my opinion that items discussed no longer qualify for closed session or never did qualify for closed session discussion.

I am asking our Mayor John Fuhrmann to engage our Middlesex County Prosecutors Office immediately and inform them of the misconduct that has apparently taken place. I demand an internal investigation of this misconduct and the creation of a process to "approve" all of the closed session meeting minutes that present and previous borough officials have blatantly denied our taxpayers. Above all, we should investigate who allowed this process to continue on throughout the past years. A process I might add that has omitted a great wealth of information from the people of our community."

Mayor Fuhrmann stated that there was a meeting held on September 28th at the Presbyterian Church and they were alerted that the second round of testing by Sadat Associates had produced a higher reading then there should have been. On the following Monday there was a meeting held in the Presbyterian Church where Sadat Associates explained that part of the TCE had been cut in half, but the Benzene level increased. In a letter dated October 1, 2009 Sadat has prepared a proposal to move forward with the sampling of the Presbyterian Church and Municipal Building for a total cost of \$46,110 and also they must formulate a physical plan to vent the building, which will require the use of an outside contractor. Mayor Fuhrmann indicated that funds are available in our loan fund. Council verbally approved, and a resolution confirming this approval will follow.

The Borough Clerk mentioned that the minutes are available in her office to view. She does not make the policy, the minutes are available, and she indicated that it is up to the council to release them. Mayor Fuhrmann stated that we will have to create a policy on how we will handle the closed session minutes.

There being no further business to discuss, Mayor Fuhrmann recessed the meeting to closed session seconded by Councilman Schueler and carried by unanimous vote of Council.

Council President Schueler reconvened the Public Meeting, and as there was no further business to discuss, the meeting was adjourned by Councilwoman DeVuyst and seconded by Councilman Class and carried by a unanimous vote of Council.

Respectfully submitted,

Kathleen Anello, RMC
Borough Clerk