

**OFFICIAL MINUTES OF THE  
BOROUGH OF BERGENFIELD  
MAYOR & COUNCIL MEETING  
May 19, 2009**

I. Meeting called to order at 8:12 p.m.

II. Roll Call:

Roll Call	Yes	No	Absent
COUNCILMAN TULLY	X		
COUNCILMAN GILLMAN			X
COUNCIL PRESIDENT LODATO	X		
COUNCILMAN AGUASVIVAS	X		
COUNCILMAN DOLL	X		
COUNCILMAN CARLSON	X		
MAYOR DRISCOLL	X		
ADMINISTRATOR	X		
CLERK	X		
ATTORNEY	X		

Frederick McGarril, Acting Administrator

Joseph Voytus, Esq., Office of Borough Attorney

III. **MAYOR DRISCOLL'S STATEMENT – OPEN PUBLIC MEETINGS ACT**

Notice of this meeting was provided on May 15, 2009. It was mailed and/or faxed to The Record, The Star Ledger, Twin Boro News and Cablevision, and placed on the Municipal Bulletin Board for Public Notices, and is on file in the Office of the Borough Clerk. Exits are to the rear and your left. Please turn off all cell phones.

IV. Salute to the Flag led by Councilman Doll.

V. **MOTION OFFERED** by Council President Lodato, that the minutes of the Special Work Session of May 11<sup>th</sup>, 2009 and the Council Meeting of April 28, 2009 be approved, **SECONDED** by Councilman Doll. All in favor. **MOTION** carried.

**PROCLAMATION/PRESENTATIONS**

**Peace Officers Day and Police Week  
May, 2009**

**PRESENTATION**

**Virginia Forde, Risk Manager, BMED Rebate**

**Ms. Forde explained about returns of surplus from money collected originally as premiums that was not spent to pay claims. For health funds such as the BMED, the money has to stay in the account for 6 years and can then be returned to the municipalities. Starting last year, they gave back the money to the members that had left 6 years earlier. Since Bergenfield left in 2008, it became eligible for its share of surplus and in January of this year, the BMED passed a formal resolution to refund the Borough of Bergenfield its share and that number is \$104,661.57. This is premium money that came from the town and is being returned to the town which is something that you would not see in a commercial insurance carrier or with the State Health Benefits Plan.**

**Scleroderma Foundation  
Stepping Out to Cure Scleroderma Annual Walk  
May 31, 2009**

**CONSENT RESOLUTION**

1. **CONSENT RESOLUTION AGENDA #09-0130.** All matters listed below are considered by the Governing Body to be routine in nature. There will be no separate discussion of these items. If any discussion is desired by the Governing Body, that item will be removed from the Consent Agenda and considered separately.

**OFFERED** by Councilman Carlson

**SECONDED** by Councilman Doll

- 1) **09-0131** To Approve Communications
- 2) **09-0132** To Authorize and Execute an Interlocal Division of Grant Funds Agreement with the Borough of Paramus for FY2009 Multi-Jurisdiction Justice Assistance Grant.
- 3) **09-0133** To Authorize Refund for Tax Overpayment to Scalora, 70 E. Clinton Ave, in the amount of \$1,179.04.
- 4) **09-0134** To Authorize Refund for Tax Overpayment to Perez, 15 Briggs Court, in the amount of \$1,927.75.
- 5) **09-0135** To Authorize Refund for Tax Overpayment to Francisco & Ortiz, 15 Beechwood St., in the amount of \$2,086.07.
- 6) **09-0136** To Authorize Refund for Tax Overpayment to Farro, 268 West Clinton Ave, in the amount of \$1,416.51.
- 7) **09-0137** To Authorize Refund for Tax Overpayment to Robinson, 47 Sugden Street, in the amount of \$1,178.62.
- 8) **09-0138** To Approve Off Premise 50/50 Raffle for Bergenfield Community Center Building Fund Committee to be drawn 07/11/09 RL1135.

Roll Call	Yes	No	Abstain	Absent
TULLY	X			
GILLMAN				X
LODATO	X			
AGUASVIVAS	X			
DOLL	X			
CARLSON	X			
DRISCOLL				

**RESOLUTION** adopted.

**VERBAL COMMUNICATIONS**

VI. Mayor Driscoll opened the meeting to Verbal Communications, and asked if anyone present wished to be heard. Please be advised there will be a limit of five (5) minutes per speaker.

1. **GERALD HICKEY**, 77 Westminster Avenue

Asked about a change in calendar for the taxes.

Mayor Driscoll responded that is two different items. Whether a calendar year or fiscal year, you will still receive the tax bill the same time of year.

C/M Carlson added that some people think changing to a calendar year will help us in the state aid process, but that is difficult to predict. But it will eliminate some of the confusion. It will be decided by August or September of this year.

2. **JOHN HICKEY**, 28 Willet Street

Referred to his OPRA request for last year's bills for the Mayor telephone numbers and the calls to San Jose, Ramsey, Queens, Cleveland, North Carolina. Someone redacted most of phone numbers so you have no way of telling whether they were for business purposes for the town or privately used.

Mayor Driscoll asked for a copy of it and he'll mark down what he can to help answer his questions, but he doesn't know what it is at the moment.

C/M Tully asked why the numbers were redacted, and isn't that public record.

Mayor responded that a lot of this is not public record, and he thinks the attorney has explained that. C/M Tully is there a statement that recites any kind of law as to why that's the case. Only a few months ago we were asked to hand over our personal emails for an OPRA request and now a public record is being redacted.

Mr. Voytus said there are specific elements of records that can be redacted under OPRA, under GRC decisions, Superior Court decisions. He doesn't know what the specific issues were here.

C/M Tully said it doesn't seem like it should be anything that should be redacted....it's a borough phone....it's public record.

Mr. Voytus doesn't know offhand what the specification was given but there are reasons to redact some personal information from public records.

Mayor said there are conversations with lawyers that are redacted. He will mark up the bill for Mr. Hickey's enlightenment.

Borough Clerk said there was another request, a similar request before, and the borough attorney's legal opinion was that the telephone numbers are to be redacted. You can have the statement but you can't the phone numbers.

C/M Aguasvivas said that the phone bill is paid by the residents, why should the whole bill be blacked out. C/M Tully said the borough has a right to know whose being called by their tax dollars.

C/M Carlson said would anyone in the town like that information to be....they have privacy rights too.

**MOTION OFFERED** by C/M Tully to un-redact those records and give Mr. Hickey what he requested.

C/P Lodato suggested waiting until next meeting and put that question to him and he can give you the information he previously gave.

Mr. Voytus said that the Borough Clerk is the custodian of records, making the determination of the law. She makes the ultimate decision.

C/M Tully asked if every phone number is redacted.

Borough Clerk said if we are not sure of a decision for an OPRA request, we always consult with the attorney and he gives us an opinion. I can give you the opinion on the prior request.

Diana Flagg said that she was the one who made the prior request and the order came down from the attorney, it did not come from the Borough Clerk.

**SECONDED** by C/M Aguasvivas.

C/M Doll said if our Borough Attorney ruled that certain information is not available to an outsider or to a resident, he thinks we have to live with that. The Borough Attorney ruled that certain things should be deleted.

C/M Tully said he sees every number deleted. We could add to the clause, 'barring any legality'.

C/P Lodato asked if he would consider carrying the motion to such time the attorney who gave the opinion is present.

C/M Tully said okay I'll carry it, we have the borough attorney here, where is Mr. Betesh tonight, we're paying your firm I don't know so much per hour.

There being no one else who wished to be heard, Mayor Driscoll closed Verbal Communications.

VII.

**UNFINISHED BUSINESS**

1. **MOTION** To Remove from the Table the Resolution To Accept the Resignation of Christine Block, Public Health Nurse, effective 05/31/09, and Approve Any and All Benefits Due as provided in the Board of Health Personnel Policies and Benefits Manual.

**OFFERED** by Council President Lodato      **SECONDED** by Councilman Doll

Vote to remove from the table

Roll Call	Yes	No	Abstain	Absent	Recuse
TULLY	X				
GILLMAN				X	
LODATO	X				
AGUASVIVAS	X				
DOLL	X				
CARLSON	X				
DRISCOLL (tie)					

**MOTION** carried.

**RESOLUTION 09-0139 (Amended)** To Accept the Resignation of Christine Block, Public Health Nurse, effective 05/31/09, and Approve Any and All Benefits Due as provided in the Board of Health Personnel Policies and Benefits Manual, **OFFERED** by Councilman Doll, **SECONDED** by Council President Lodato, attached. *Amended* to read “three months terminal leave pay based on 21-hour work week”.

Roll Call	Yes	No	Abstain	Absent	Recuse
TULLY	X				
GILLMAN				X	
LODATO	X				
AGUASVIVAS	X				
DOLL	X				
CARLSON	X				
DRISCOLL (tie)					

**RESOLUTION** adopted.

### **NEW BUSINESS**

- RESOLUTION 09-0140** To Accept Retirement of Career Firefighter James C. McGoldrick, effective August 31, 2009, **OFFERED** by Council President Lodato, **SECONDED** by Councilman Doll, attached.

Roll Call	Yes	No	Abstain	Absent
TULLY	X			
GILLMAN				X
LODATO	X			
AGUASVIVAS	X			
DOLL	X			
CARLSON	X			
DRISCOLL				

**RESOLUTION** adopted.

C/P Lodato said that FF McGoldrick, a former classmate, served this borough for 30 years and he wishes him well in his retirement.

- RESOLUTION 09-0141** To Accept Retirement of Police Chief Frederick McGarril, effective May 31, 2009, **OFFERED** by Council President Lodato, **SECONDED** by Councilman Tully, attached.

Roll Call	Yes	No	Abstain	Absent
TULLY	X			
GILLMAN				X
LODATO	X			
AGUASVIVAS	X			
DOLL	X			
CARLSON	X			
DRISCOLL				

**RESOLUTION** adopted.

4. **RESOLUTION 09-0142** To Approve Transfer of Appropriations in the FY2009 Budget. **OFFERED** by Councilman Carlson, **SECONDED** by Councilman Doll, attached.

Roll Call	Yes	No	Abstain	Absent
TULLY	X			
GILLMAN				X
LODATO	X			
AGUASVIVAS	X			
DOLL	X			
CARLSON	X			
DRISCOLL				

**RESOLUTION** adopted.

5. **RESOLUTION 09-0143** To Approve Chapter 159 Special Item of Revenue and Appropriation for Playground Equipment Replacements - \$126,750., **OFFERED** by Councilman Carlson, **SECONDED** by Council President Lodato, attached.

Roll Call	Yes	No	Abstain	Absent
TULLY	X			
GILLMAN				X
LODATO	X			
AGUASVIVAS	X			
DOLL	X			
CARLSON	X			
DRISCOLL				

**RESOLUTION** adopted.

6. **RESOLUTION 09-0144** To Ratify RWDSU Local 29/108 Agreement (White Collar/ Clerical) for term 07/01/07-06/30/11. **MOTION TO TABLE OFFERED** by Councilman Aguasvivas, **SECONDED** by Councilman Tully. **TABLED**

C/M Doll said the Labor Counsel, Eric Bernstein, provided some information to the council at our last meeting; however, it was a verbal report. This evening the Borough Clerk gave us a formal written agreement with the terms of the contract. He thinks all of the items the Labor Attorney provided for us are there; however, he would feel more comfortable having some discussion from the Borough Labor Attorney on the aspects of the contract.

C/M Tully said we have never seen the contract, we are just going by what we were told.

C/M Carlson said personally he believes this is a solid agreement, the union agreed, he doesn't see any reason not to follow his instructions....this is a fair agreement. Like in any good agreement, both sides got something, he thinks we should go ahead with it.

C/P Lodato said he was moving this matter but if there is concern and a request to bring Mr. Bernstein in, he'll withdraw the motion and ask if someone wants to move to table.

C/M Tully said he wants a copy of the contract, we're just not going to vote on something by what is being told to us. He wants to know what the increases are, if everyone is getting paid a blanket increase, are some being paid more than others. He has heard some things that are very concerning and he would like to see it.

Mayor said these are the only changes in the contract, the other things that are not identified here have not been changed.

B/A McGarril said the basic points in this agreement is that this is only the second labor union in the borough to agree to a percentage copay on the medical benefits and this is first union agreement in the borough that actually approves the state health benefits plan prescription program. The raises were not philosophically uniform but there were a lot of people not working in their correct title, so under this contract, they were placed into their correct title, so they may or may not have gotten the same raises as everyone else depending upon what titles they were placed in. Some people changed job specifications so they may have gotten a smaller raise than another individual who was in the proper job classification.

C/M Tully asked what the largest percentage increase is in the contract.

B/A McGarril said the general percentage increase in the contract was 3%.

C/M Tully asked for an individual what was the highest. He can't tell him that because some individuals went from one job specification to another; technically that is not a raise, just a correction on a job classification.

C/M Carlson asked if there are any consequences to tabling it; are we hurting our employees.

B/A McGarril said the ratification of this agreement does affect the continuing negotiations with other bargaining units..Mr. Bernstein was hoping to get this ratified so he could proceed with this type of agreement with the other open unions. There is a PBA arbitration brief due at the end of this month or the beginning of next, that he was going to use this agreement in his brief which is due June 1.

We had another negotiation session with the DPW workers and have another one scheduled for next week, and currently hope we have a memorandum of agreement sitting with the Fire Department now. This one is part and parcel to those three until this one is ratified.

C/M Doll took a quick look at it before they came out and believes the important items are contained in the agreement and honestly doesn't believe there would be any benefit by putting it off. If it also triggers these other negotiations that we are having and has an impact on them, otherwise, we are opening up the whole thing again.

C/M Tully just wants to know what they are voting on.

**MOTION OFFERED** by Councilman Aguasvivas to table, **SECONDED** by Councilman Tully.

Vote on Motion To Table

Roll Call	Yes	No	Abstain	Absent
TULLY	X			
GILLMAN				X
LODATO	X			
AGUASVIVAS	X			
DOLL		X		
CARLSON		X		
DRISCOLL				

**MOTION To Table** carried 4 ayes – 2 nays – 1 absence.

C/P Lodato suggested scheduling a meeting as soon as possible with Eric Bernstein.

C/M Tully would like to see a copy of the contract.

Mayor asked Borough Clerk to give them a copy of the old contract.

7. **RESOLUTION 09-0145** To Approve Final Payment to J.R. Haftek Co., Inc., for Clinton Park Drive Sewer Rehabilitation in the amount of \$6,820.35, **OFFERED** by Councilman Carlson, **SECONDED** by Councilman Doll, attached.

Roll Call	Yes	No	Abstain	Absent
TULLY	X			
GILLMAN				X
LODATO	X			
AGUASVIVAS	X			
DOLL	X			
CARLSON	X			
DRISCOLL				

**RESOLUTION** adopted.

8. **RESOLUTION 09-0146** To Pay Bills, **OFFERED** by Councilman Carlson, **SECONDED** by Councilman Doll, attached.

Roll Call	Yes	No	Abstain	Absent
TULLY	X			
GILLMAN				X
LODATO	X			
AGUASVIVAS	X			
DOLL	X			
CARLSON	X			
DRISCOLL				

**RESOLUTION** adopted.

## COMMITTEE/DEPARTMENT REPORTS

VIII. **MOTION** offered by Council President Lodato that the Committee/Department Reports be spread upon the minutes in full and filed. **SECONDED** by Councilman Doll. All in favor. **MOTION** carried.

IX. At this time, the Governing Body may go into **CLOSED SESSION** to discuss:  
Personnel  
Legal/Litigation  
Economic Stimulus Funding

**RESOLUTION 09-0147** To Authorize Entering Into Closed Executive Session at 8:50 p.m., **OFFERED** by C/M Doll, **SECONDED** by C/M Carlson. All in favor. **RESOLUTION** adopted.

## ADJOURNMENT

X. There being nothing further to come before the meeting on **MOTION** offered by Council President Lodato, **SECONDED** by Councilman Doll, and carried the public meeting adjourns at 10 p.m.

Respectfully submitted,

Carole Chamberlain-Berman  
Acting Borough Clerk

---

Timothy J. Driscoll, Mayor