

**SPECIAL COUNCIL MEETING, 430 WESTFIELD AVE., CLARK NJ
June 13, 2022**

ROLL CALL:

Present: Council Members Hund, Mazzarella, O'Connor, Smith, Toal, Minniti
Absent: Albanese

Also Present: Mayor Sal Bonaccorso; James Ulrich, Business Administrator; Mark Dugan, Township Attorney; Edith Merkel, Township Clerk;

The Special Meeting of the Municipal Council of the Township of Clark was called to order at 7:30 pm by Council President Minniti. He asked all present to participate in a moment of silence, following the salute to the Flag.

PLEDGE OF ALLEGIANCE TO THE FLAG - MOMENT OF SILENCE

This meeting is in compliance with the Open Public Meetings Act as adequate notice of this meeting has been provided by sending written advanced notice of at least 48 hours to the Star Ledger, Union County Hawk, Union County Local Source, and TAP into Clark, by posting such Meeting Agenda on the Bulletin Board in Town Hall reserved for such announcements, as well as the Official Website of the Township and the proper filing of said Notice. Formal action may be taken at this meeting.

Attorney Dugan: We're going to adopt a Resolution now to go into close session to discuss Resolution's # 4, 5 and 6 on the Special Council Meeting Agenda

Motion to go into Private (7:37 pm) was made by Councilman Mazzarella, seconded by Councilman Hund

Council President Minniti directed roll call:

Aye: Hund, Mazzarella, O'Connor, Smith, Toal, Minniti

Resolution 22-94

RESOLUTION FOR CLOSED EXECUTIVE SESSION

WHEREAS, the Township of Clark (the "Township") is a party to certain pending litigation venued in the United States District Court for the District of New Jersey, bearing Civil Action No. 2:17-CV-00737-WJM-ESK, captioned DiIorio vs. Clark Township, et al., and certain litigation venued in the Superior Court of New Jersey, Law Division, Union County, bearing Docket No. UNN-L-001125-22, captioned Paff vs. Township of Clark, et al., and bearing Docket No. UNN-L-1099-22, captioned Rise Against Hate vs. Township of Clark, et al. (collectively the "Litigation"); and

WHEREAS, legal counsel defending the Township is to report to the Township Council with respect to the Litigation and such communication falls within the attorney-client privilege; and

WHEREAS, in accordance with N.J.S.A. 10:4-12 (b) (7), the Council may exclude the public from its meeting with such legal counsel to preserve the attorney-client privilege and such exclusion also further is required in order for the attorney to exercise his ethical duties as a lawyer.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the Township of Clark, County of Union, State of New Jersey, that such Township Council meet in private with such legal counsel excluding the public from such meeting in accordance with N.J.S.A. 10:4-12 (b) (7) to discuss the Litigation; and

BE IT FURTHER RESOLVED that the discussion conducted in such closed executive session of the Township Council with such legal counsel may be disclosed to the public after the Litigation has been fully resolved by settlement (subject, however, to the terms thereof) or adjudication by the Court.

Motion to end closed session (8:04 pm) was made by Councilman O'Connor, seconded by Councilman Smith

Council President Minniti directed roll call:

Aye: Hund, Mazzarella, O'Connor, Smith, Toal, Minniti

ORDINANCE, APPROPRIATIONS AND CLAIMS:

PUBLIC HEARING ON PROPOSED ORDINANCE:

(No objections have been received in connection with the proposed Ordinance)

Ordinance 22-06

**ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWNSHIP OF CLARK,
COUNTY OF UNION, NEW JERSEY ADOPTING THE RARITAN ROAD
REDEVELOPMENT PLAN FOR THE PROPERTY DESIGNATED AS BLOCK 60,
LOTS 60.01, 61, 62 & 63 ON THE OFFICIAL TAX MAP OF THE TOWNSHIP OF
CLARK**

Council President Minniti opened the Public Hearing on Ordinance 22-06

Seeing no one coming forward Councilman Smith made a motion to close the Public Hearing, seconded by Councilman Hund

Council President Minniti directed roll call:

Aye: Hund, Mazzarella, O'Connor, Smith, Toal, Minniti

Motion to adopt Ordinance 22-06 was made by Councilman O’Connor, seconded by Councilman Smith

Discussion:

Jim Ulrich: gave a brief explanation of the Ordinance

Council President Minniti directed roll call:
Aye: Hund, Mazzarella, O’Connor, Smith, Toal, Minniti

Ordinance adopted

INTRODUCTION OF PROPOSED ORDINANCES:

**AN ORDINANCE TO AMEND ARTICLE I,
CHAPTER 145, SECTION 3
OF THE CODE OF THE TOWNSHIP OF CLARK
ENTITLED “POLICE DEPARTMENT”**

WHEREAS, the Township Council wishes to change the fees payable for certain applications, permits and services.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Clark, County of Union, State of New Jersey, that the following changes be made to Article I, Chapter 145, Section 3 of the Code of the Township of Clark entitled “Police Department” be and hereby is supplemented, modified and amended to state as follows:

SECTION 1. Article I, Chapter 145, Section 3 of the Code of the Township of Clark, entitled “Police Department,” be and hereby is supplemented, modified and amended to state as follows:

145-3 Police Department.

A. Firearms:

(1) Application for firearms ID card (in addition to all state and federal fees and requirements): \$25.

(2) Application for permit to carry handgun, each (in addition to all state and federal fees and requirements): \$25.

B. Escort service, per round trip: \$25.

C. Fingerprints: \$10.

D. Alarms: See § 70-5D and E.

E. Charges for outside police details undertaken by police.

(1) Traffic work not paid by Township; use of police vehicle.

(a) All requests for outside police details under this section shall give at least three hours' advance notice. Failure to provide such advance notice shall result in an increase of the hourly fee for such detail from \$80 per hour to \$90 per hour. The employing person or employing entity shall file a certificate attesting to the existence of worker's compensation coverage for all police officers so employed on outside police details.

(b) All traffic work not paid by the Township of Clark shall be at the rate of \$80 per hour, with a detail minimum of four hours, for jobs in excess of four hours, the officer will be compensated for no less than eight hours together with an administrative fee as per 145-3 E [4],

(c) After 8 hours the rate will increase to \$120 per hour or \$135 per hour if an officer is working on an emergency basis as per 145-3 E (1) (a), paid in thirty-minute increments together with an administrative fee as per 145-3 E [4].

(d) Use of a police vehicle (local use only) shall be fixed at \$108.00 for each assignment.

(2) Traffic work for Township vendors and all other indoor/outdoor details not requiring traffic control will be \$60 per hour for the first 8 hours, after 8 hours the rate will increase to \$90 per hour plus an administrative fee as per 145-3 E [4].

(a) Detail minimums:

(i) Funeral homes: 2 hours.

(ii) Board of Education: 3 hours.

(iii) All others: 4 hours.

(b) All requests for outside police details under this section shall give at least one hours' advance notice. Failure to provide such advance notice shall result in an increase of the hourly fee for such detail from \$60 per hour to \$70 per hour.

(3) Contractors/employers must provide at least two hours' notice in advance to cancel a detail. Officers shall be entitled to the detail minimum payment should this notice not be provided.

(4) In addition to the rates payable by said person(s) or entity(ies) for the police officers employed on outside police details and/or other costs set forth in this section, Clark Township, either directly or through a contracted vendor, shall collect an administrative fee to offset the administrative costs associated with the assignment of the Clark police officers. This administrative fee shall include: (i) a fee calculated at the rate of 24.2% of fees payable to Clark Township; and (ii) a fee calculated at the administrative rate imposed by any contracted vendor utilized by Clark Township for the scheduling or administration of assignment of the police officers employed on said outside police details.

(5) Future changes in fees shall be by resolution of the governing body.

SECTION 2. Inconsistency - All ordinances or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

SECTION 3. Severability - If any clause, sentence, section or other portion of this ordinance, or the application thereof to any person or circumstance, shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or repeal the remainder of this ordinance.

SECTION 4. Effective Date - This ordinance shall take effect twenty (20) days following passage and publication as required by law.

Moved by Councilman Mazzarella, seconded by Councilman Hund

Discussion:

Jim Ulrich: gave a brief explanation of the Ordinance

Council President Minniti directed roll call:

Aye: Hund, Mazzarella, O’Connor, Smith, Toal, Minniti

Public Hearing July 5th, Municipal Building, Room 30

RESOLUTIONS:

Resolution 22-95

WHEREAS the Governing Body of the Township of Clark advertised and received four (4) bids for the 2022 NJDOT Road Improvements to Mildred Terrace and Brentwood Road on May 26, 2022 at 10:00 a.m.; and

WHEREAS the lowest bid substantially exceeds the cost estimates for the service (N.J.S.A. 40A:11-13.2(a).

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the Township of Clark, County of Union, State of New Jersey that it hereby ratifies the action taken by the Business Administrator to reject the bids for the 2022 NJDOT Road Improvements and grant authorization to re-bid the project.

Moved by Councilman Toal, seconded by Councilman Mazzarella

Discussion:

Jim Ulrich: gave a brief explanation of the Resolution

Council President Minniti directed roll call:

Aye: Hund, Mazzarella, O’Connor, Smith, Toal, Minniti

Resolution 22-96

BE IT RESOLVED by the Governing Body of the Township of Clark, County of Union, State of New Jersey, that the settlement of certain pending litigation entitled Antoinette DiIorio v. Township of Clark, et al., bearing Civil Action No. 2:17-CV-00737-WJM-ESK, in consideration of payment to Plaintiff of the amount of \$325,000.00, be and hereby is approved, ratified and confirmed.

Moved by Councilman Smith, seconded by Councilman Hund

Discussion:

Attorney Dugan: So, this is a Resolution we’re considering tonight as to whether or not to settle a civil action instituted against the Township, the Police Department, various Police Officials and Township Officials for an incident that occurred. I don’t recall the exact date, it happened I think in 2015. I believe the action was filed in 2016 and COVID delayed everything and the Courts are very backed up right now, so it’s really just getting to this now. It has been fully litigated; we’ve taken depositions of all witnesses and parties. We’ve had a police expert report, the plaintiffs had a police expert report. And the ultimate decision that the attorneys made, my firm, and a firm named Methfessel and Werbel which is a defense firm because there were various parties, one attorney cannot represent everybody. So, our firm represented the Township and the Township Officials that were named and Methfessel and Werbel represented the Police Officers that were named. The decision that the lawyers reached together with the insurance carrier is to settle the matter, that’s why we were in close session to discuss that. If in fact it’s settled tonight, they are

going to have to adopt a resolution to approve that, the Council will. I will be in a position once the case has been fully dismissed by way of filing the necessary documents in Court dismissing the action with prejudice, we will explain to you in greater detail to the extent if anyone wants to hear it what was involved. But essentially the case involved a negligence claim and use of excessive force claim against our Police Department. A woman was pretty badly hurt and seemed to recover pretty quickly. She wasn't in the hospital for a long time but she was badly hurt in terms of breaking many bones and losing many teeth. The decision was made that we would settle this if the Council is so inclined. So, now that's what this resolution that we are considering right now is about.

Council President Minniti directed roll call:
Aye: Hund, Mazzarella, O'Connor, Smith, Toal, Minniti

Resolution 22-97

BE IT RESOLVED by the Governing Body of the Township of Clark, County of Union, State of New Jersey, that the settlement of certain pending litigation entitled Paff vs. Township of Clark, et al., bearing Docket No. UNN-L-001125-22, in consideration of the delivery to Plaintiff of an un-redacted copy of a certain Confidential Settlement Agreement and Release, dated January 29, 2020, among Antonio Manata, and Township of Clark, Salvatore Bonaccorso, John Laezza, Pedro Matos, Vincent Concina and Joseph Teston, and payment to Plaintiff or Plaintiff's counsel upon signed written instruction of Plaintiff, of the amount of \$2,000.00 in reimbursement of Plaintiff's counsel fees, costs and expenses, be and hereby is approved, ratified and confirmed.

Moved by Councilman O'Connor, seconded by Councilman Smith

Discussion:

Attorney Dugan: So, this is a settlement of an action brought under the Open Public Records Act. There was a demand by a gentlemen named John Paff. He kind of makes a career out of filing these requests then suing people when he thinks the responses are inconsistent with the Law, he did that here. This was a request for a copy of a settlement agreement pursuant to which the Manata matter was settled. At that time the Township was collaborating, I was collaborating with the Assistant Prosecutor Robert Rosenthal because they had taken over the police department and were investigating us. They had all of our information and we had to work with them. And as a result, we redacted the document in accordance with the Law, case law, and that's was

ended up becoming the subject of an action by Mr. Paff. Robert Varady is an Attorney that we engaged to help us with these OPRA requests and to defend us. He filed opposition papers, we were about to move forward and inadvertently someone released the document to the public to a separate party which was unredacted. So rather than fight over something that's already out in the public, we decided to settle it. The settlement involves providing to them, to Mr. Paff the unredacted settlement agreement and reimbursing him (plaintiff's attorney) I think it was \$2,000.00. It's in the Resolution that everybody has, \$2,000,00 of his counsel fees which he discounted I believe off of about \$4,000.00/\$5,000.00, and that is reimbursing him his counsel fees. Under the Open Public Records Act if a Township is deemed to have improperly withheld information, the plaintiff is entitled to recovering of their attorney's fees. It also would have cost us money for our own attorney to continue to defending it. It seemed rather silly to defend an action to withhold a document that already got out into the public, so we settled the case.

Council President Minniti directed roll call:
Aye: Hund, Mazzarella, O'Connor, Smith, Toal, Minniti

Resolution 22-98

BE IT RESOLVED by the Governing Body of the Township of Clark, County of Union, State of New Jersey, that the settlement of certain pending litigation entitled Rise Against Hate vs. Township of Clark, et al., bearing Docket No. UNN-L-001099-22, in consideration of the delivery to Plaintiff of Complaint-Summonses (CDR-1s) from January 1, 2022 to January 31, 2022, and payment to Plaintiff or Plaintiff's counsel upon signed written instruction of Plaintiff, of the amount of \$1,200.00 in reimbursement of Plaintiff's counsel fees, costs and expenses, be and hereby is approved, ratified and confirmed.

Moved by Councilman Smith, seconded by Councilman O'Connor

Discussion:

Attorney Dugan: This was another action filed against the Township under the Open Public Records Act. Again, a party made a request to the Township this time for the CDR-1's and I'm not a criminal lawyer so I'm not very conversant with this but there are two types of complaints as I understand it that are issued by police officer. One is called a CDR-1 which is a non-custodian violation, it's like a ticket, a summons, you hand it to the person and they have to pay the ticket. The other is CDR-2's which are custodial as I understand it. This was a request for all CDR-1's, in other words non-custodial summonses that were complaints that were issued by the Township Police Department for the time period January 1, 2022 to January 31, 2022. There's a case with the Township Police Department, not anyone within the Administration. The police

department in processing that request because again we don't have control over the police department. But still, if we still have to go to them to get things from them because they are really controlled by the County Prosecutor and now the AG. So, that the police department denied that request in its entirety. There's case law on point that makes it clear that those documents are fully disclosable under OPRA. So, rather than fighting that we decided that there were only five or six of them issued at that period of time, we decided that we would settle that case by giving those documents to the plaintiff which is "Rise Against Hate" and reimbursing them \$1,200.00 for their counsel fees which also was discounted about \$3,000.00 or \$4,000.00.

Council President Minniti directed roll call:

Aye: Hund, Mazzearella, O'Connor, Smith, Toal, Minniti

Resolution 22-99

BE IT RESOLVED by the Governing Body of the Township of Clark, County of Union, State of New Jersey, that it hereby authorizes the Business Administrator to execute a contract for services between the New Jersey Department of Community Affairs, Division of Housing and Community Resources Low Income Household Water Assistance Program (LIHWAP) and the Township of Clark.

Moved by Councilman Mazzearella, seconded by Councilman Smith

Discussion:

Jim Ulrich: explained the Resolution.

Council President Minniti directed roll call:

Aye: Hund, Mazzearella, O'Connor, Smith, Toal, Minniti

PUBLIC COMMENTS: (Summary) (Council meeting can be viewed on our website at www.ourclark.com or TV 36)

Each person addressing the Council shall first give their name and address to the Clerk. All remarks shall be addressed to the Council as a body and shall not exceed 10 minutes in duration.

Council President Minniti opened the public portion of the meeting

Michael Shulman, 382 Carolina St.:

- Appreciated that the Resolutions were explained by the Business Administrator as well as Mr. Dugan before they were being voted on
- Questioned Mr. Dugan regarding the settlements specifically the first one with the individual with the excessive force case

- Dugan responded that he didn't handle the case, so he's not able to speak of all the various factors
- Questioned Mr. Dugan regarding the insurance carrier involved in the matter DiIorio vs Township of Clark, if it's the same insurance carrier that was responsible for some of the payment on the Manata matter
- Dugan responded it's the JIF and then there's the MEL the excess liability carrier, also explained the insurance procedures for the Township
- Questioned Mr. Dugan regarding the redactions and the copies that were provided if they were from the Prosecutor's office, Mr. Varady's office, or his office on behalf of the town
- Dugan responded the redactions were made by him in collaboration with the Prosecutor's office and before submission approved by the Prosecutor's office
- Asked if somebody in the Prosecutor's office reviewed those redactions
- Dugan responded yes
- Questioned prior to Clark Police Records Bureau denying the OPRA Request, did anyone speak to Council or spoke to Dugan
- Dugan responded no one spoke to him
- Questioned if it has been looked into as to what the chain of procedure should be when it comes to certain OPRA Request at the Police Department since we hired new Counsel
- Dugan responded the Clerk's office is capable of addressing some of the OPRA requests and the police department are fully capable handling some of them themselves. Why this one was not brought to my attention I don't know
- Questioned the agenda doesn't contain the resolutions, wants someone to correct him if he's wrong but the agenda is void of the actual resolution and therefore void of the financial implications of those settlements
- Township Clerk responded the full packet of the meeting is on our website, it's put on before each meeting
- Dugan responded that full packet including the agenda has all the specifics we've talked about

Anthony Cortazzo, 56 Conger Way:

- Questioned the settlement regarding the excessive use of force, asked if that's one of the cops that's suspended
- Dugan responded yes
- Questioned he's going to cost us a lot of money but he still has a job, still no hiring or firing at a different level, that has to come from the State, right?
- Dugan responded he's not conversant with labor law but I don't believe with these circumstances we can terminate him; I will certainly check into that with our Labor Counsel and get an answer for you
- Dugan also responded saying what's alleged against the officer at this point is simply an allegation, it's not a fact
- Mayor responded one has nothing to do with the other with this case. This lawsuit happened in 2015 which he was not found to do anything improper as a police officer. That was investigated and that case with this person he was found not to have done

anything wrong. They sued civilly for damages which was their right and this other issue has nothing to do with the other

- Questioned if this is the Internal Affairs Cop
- Dugan responded he doesn't know who he is
- Stated the officer has still cost the town a lot of money along with the two other officers collecting money
- Appreciated what has been done and what is being done for the town, also appreciates the increased transparency, but there has to be some kind of outcome to this
- Dugan responded there will be ultimately, right now as I said about that officer applies to the other two officers, stated he doesn't believe we can terminate them under these circumstances and even if we could we would end up being sued again, we're trying to avoid lawsuits
- Stated he understands and thanked everyone for their time

Seeing no one else coming forward Councilman Toal made a motion to close the public portion of the meeting, seconded by Councilman Smith

Council President Minniti directed roll call:

Aye: Hund, Mazzarella, O'Connor, Smith, Toal, Minniti

MAYOR, COUNCIL AND PROFESSIONAL COMMENTS:

Mayor Bonaccorso: No comments.

Councilman Hund: No comment at this moment.

Councilman Mazzarella: Nothing tonight, thank you.

Councilman O'Connor: Not on this agenda, thank you.

Councilman Smith: I'll wait until the next meeting.

Councilman Toal: Next meeting, please.

Council President Minniti: I have no comments.

Jim Ulrich:

- Addressed Mr. Shulman's comments
- Acknowledged he missed two meetings last month due to being away
- Stated discussions are done at workshop meetings, they are not televised or recorded, this is where we go through all of things that are on the agenda and are voted on at the public meeting
- Mentioned Mr. Shulman has been at the meetings for only the last two months, that's why he hasn't seen the discussions happen

Attorney Dugan: No comments.

Township Clerk: No thank you.

ADJOURNMENT:

Motion to adjourn was made by Councilman Mazzarella, seconded by Councilman Smith

Council President Minniti directed roll call:

Aye: Albanese, Hund, Mazzarella, O’Connor, Smith, Toal, Minniti

APPROVED

JAMES MINNITI
Council President

ATTEST:

EDITH L. MERKEL, RMC
Township Clerk