

January 23, 1992

Closed Session

Roll Call:

Mr. Gabriel	Absent	Mrs. Kaplowitz	Excused
Mrs. Bottomley	Present	Mr. Ryan	Present
Mr. Goldberg	Present	Mr. Stocco	Present
		Mayor Siddons	Present

Mayor Siddons stated that there are two (2) contracts which are not completed, there are several reasons why, salary amounts are still needed to complete the Police Contract. The borough ran into some problems when the Borough Attorney wrote the contract, the Mayor stated what he has done is tried to get the borough out of a particular mess. Mayor Siddons explained that it has to do with sick leave. The contract that is existing includes that the employees are paid for sick leave whenever they left. Mrs. Bottomley asked does this mean that if you saved up your sick leave you got it in a lump when you left. The Mayor stated they also had a buy back arrangement, he has tried to straighten it up without taking away too much of the employees rights, this includes both the borough employees and the police department. What has been done, in the past they had a maximum of 158 sick days they could accumulate, once they reached the 158, they were paid out in varying lump sums, they got down and then up again. The Mayor said he wants them automatically paid when they reach the 158, they just get paid for any additional sick leave not going over the 158. This will prevent the borough from having up and down arrangements with employees and having big hits. The current arrangement is when they get out/retire they would get the 158 paid. The borough is reaping what happened when the borough had no money and the benefits were increased, and the money was not, These items are in the contract and we are trying to straighten them out. Also for the existing employees allowing them for reimbursement down to 100 days, so any where between 158 and 100 they can get their reimbursement whenever they want. Mr. Goldberg asked if this requires renegotiation of the contracts? Mr. Goldberg said this could null and void the whole agreement, Mayor Siddons stated that it could, but if it is not straighten out we could end up paying any one who leaves the employe of the borough at any time. Mr. Goldberg stated the work that been done with negoitaing might get knocked down. Mrs. Bottomley said you're not cheating them. Mayor Siddons any time during their employment that they want to get down to 100 they can. Mrs. Bottomley when they have 158 days, Mayor Siddons said that we have to pay them, we can't carry the continued liability on the books. Mrs. Bottomley said by putting the limit on you don't have that liability hanging on the books. Mr. Stocco asked the option of paying at once a year basis, Mayor Siddons said the limit can be reached in 6.5 years. Mayor Siddons said he is trying to straighten this out. Mrs. Bottomley said this is not that distasteful. Mayor Siddons said what they are really loosing is the right to get it if they leave. Mr. Goldberg asked if they leave can't get their days, that would be a big savings. Mrs. Bottomley asked if they were going to not get their days, Mayor

Siddons said they have the right to go down to 100 days, question what if you retire. Mayor Siddons said if you retire you get it, if you resign or get fired you lose those days. Mr. Goldberg said this is a major change, why would they accept this. Mayor Siddons said that he is trying to get the borough out of the damn hole, because one patrolman asked for payout and we never paid him. Mr. Stocco said you'll never get them to agree. Mrs. Bottomley asked how do you intend to pay them, how buy this back, the change. Mayor Siddons said that the way it reads now is the expiration of employment, what I'm doing is trying to get that out. Example is a person works one day over one year and never worked a sick day they are entitled to 27 sick days. Mr. Goldberg questioned why this wasn't addressed when negotiations were taking place. Mrs. Bottomley said that we didn't make any changes in the contract, Mayor Siddons said that the details would be worked out later. Mayor Siddons said that when he read the contract and came to this, he found out this had been a repetition. Mr. Goldberg said the employees are going to say we are not going to give this away. Mayor Siddons said that they do get certain benefits out of this, when they reach 6.7 years they have passed the 100 day mark, they can then take any thing over, now they have to terminate employment. The only advantage that they are going to get is taking the days above 100 days. Mrs. Bottomley said that's interesting because that the only way they can get money out of it. Mayor Siddons said when an employee is here over 6.7 they will be counting an additional 15 days pay per year. The nice thing is that you have employees you can count on because once you get them up to 100 days, they will die before they come stay home sick. Mrs. Bottomley said explained you don't get in a lump you earn 4 hours of sick leave every two weeks, and it doesn't turn over, and you never get it back. Mayor Siddons said if the employees are not really ill be there and not steal the day, he also noted that wrong with the two (2) contracts the council will know the reason is. Mrs. Bottomley said they will probably buy it, there is something a little fishy, Mayor Siddons said if you laid them off for economy reasons they should probably be paid. Mrs. Bottomley asked what did the attorney say if the employee was fired, they own this benefit. Mayor Siddons said that they earned the sick leave but don't get compensated if they are fired for cause, or if they quit. Mr. Goldberg asked when will this be presented, Mrs. Bottomley said can't the Mayor meet with the employees. The general employees said they would accept the same percentage as the police. Mrs. Bottomley said can we meet right away and see if they will buy it. Mayor Siddons said this will get us out of a miserable situation, and this has to go. Mr. Stocco said you better have a good presentation so they understand the pros and cons. Mayor Siddons said this limits the borough's liability and we have to do something in that area.

Mayor Siddons said the other item that has to be brought up, in lieu of the resignation of the Tax Collector, Wendy Prior has been taking the courses and has one remaining, we will have to adjust her salary accordingly and also get someone in the office to give a hand.

Mrs. Bottomley said the salary request for the Emergency Management Coordinator bothers her, Mayor Siddons concurred. Discussion continued as to taking a survey of neighboring communities who may or may not pay a salary to the EOC Officials. The EOC has a O&E and reimbursement for out of pocket expenditures can be reimbursed. Mrs. Bottomley suggested that Mr. Platt be invited to attend and explain his request.

Motion to close this portion of the meeting made by Mr. Goldberg second by Mr. Stocco at 9:50 p.m.

Roll Call Vote:

Mr. Gabriel	Absent	Mrs. Kaplowitz	Excused
Mrs. Bottomley	Yes	Mr. Ryan	Yes
Mr. Goldberg	Yes	Mr. Stocco	Yes
		Mayor Siddons	Yes

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Respectfully submitted, Ellie Rogalski, RMC



Closed Session

February 12, 1992

The following members were present for the Closed Session:

Mr. Gabriel  
Mrs. Bottomley  
Mr. Goldberg

Mrs. Kaplowitz  
Mr. McKelvey  
Mr. Ryan  
Mayor Siddons

Mrs. Kaplowitz stated that we have a problem with the cleaning of the Library, the individual who had agreed to do this is no longer able to do so. Discussion as to having Sammy Applegate take over this responsibility, it will be discussed with the Borough Super and scheduled accordingly.

Motion to close this session made by Mr. Goldberg second by Mr. Ryan, voice vote, all in favor at 9:35 p.m.

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Respectfully submitted, Ellie Rogalski, RMC



CLOSED SESSION

FEBRUARY 27, 1992

For the record the following members were present at the closed session.

Mr. Gabriel  
Mrs. Bottomley  
Mr. Goldberg

Mrs. Kaplowitz  
Mr. McKelvey  
Mr. Ryan  
Mayor Siddons  
Borough Clerk

Mr. Hutchinson

Mr. Goldberg said he had come to his attention when the Chief of Police attended a meeting of the Police Committee, as to whether a reprimand that had been place in Ptl. Barstow's personnel file is still in that file. Chief Burger said that it had been removed, this council had voted in closed session to refer the matter of Karl Mohl to the Ocean County Ethics Committee. Mr. Mohl had represented Ptl. Barstow in sending a letter to council that the reprimand be removed. Sometime after that we received a letter from Mr. Mohl saying that he represented the Chief, and we felt that it was a potential conflict, and the matter was referred the O.C. Ethics Committee. Mr. Goldberg said what he was more concerned that the reprimand might have been removed and not appropriately so. Mr. Goldberg said he spoke with Mr. Hutchinson and this new development that the reprimand has been removed should as a follow up be referred to the O.C. Ethic Committee, we have a responsibly to do that. Mr. Goldberg stated that he felt there is a clear ethical violation here, and he feels that why the reprimand was removed is not the issue, the council's concern is the conflict. He represented the Ptl. and then represented the Chief on another matter, and then we come to learn yesterday that the reprimand has been removed, this has to be divulged to the Ethics Committee. Mr. Hutchinson noted this is a harsh thing to do to an attorney, there can be serious ramifications. Mayor Siddons asked if this was so much an ethics problem with the attorney unless he made some representation, I'll represent you if you remove the letter, unless he did something like that as much as it would be on Bob's part. Mr. Goldberg said it raises the question of an appearance of improprieties at best. Karl Mohl represents the O.C. Chief's Association where does he come off sending a letter on behalf of a Ptl. in the first place, saying that a reprimand should be removed, you can't wear that many hats even if you come from the Novins firm. Mr. Goldberg said, the point is he just doesn't like that he can be on some many sides of an issue, it's inappropriate. The committee was wondering if they could see the jacket to see in fact if the reprimand is still there. Mr. McKelvey said he asked the Chief if you remember at the meeting that we felt it was unethical that they both have the same attorney, how the hell do you represent the patrolman and at the same time represent his

superior. The Chief said that the problem was that he happens to be the attorney for the O.C. Chief's Association, and that Ptl. Barstow independently choose him. Mr. Goldberg said the point is I think it's the attorney. Mr. McKelvey said it's the opposite Ptl. Barstow was the first then the Chief came later. Mr. Goldberg said perhaps he should not have taken Barstow as a client when he was representing the O.C. Chief's Association requesting that the Chief do something. Mr. Goldberg said he thinks it's a clear conflict, and this council should follow up, not in a vindictive nature, but he doesn't think that someone is treating the borough correctly when you're doing something like that, basically his letter was nasty, and we should set Mr. Mohl straight, or the committee should, we have an obligation to do this. Mr. Hutchinson said he did not get a response from the first letter, if the council wishes he will send another letter, it seems extreme and harsh, but I will do it. Mr. Goldberg said he wanted to comment on Charlie's comment and if he wants to take it personal he didn't care, he said you work for this council and if you don't have the stomach to do it, then maybe we should get an attorney who does. Mayor Siddons said he said he would do it, Mr. Goldberg said but he said it reluctantly, we're the elected officials that vote, and the attorney is hired to do what legally we tell him to do. Mr. Hutchinson said the reason he brought it up that council should be aware of the ramifications of doing this, potentially someone could get disbarred, and you have to keep in mind that he could take action against the council, there are potential consequences. Mr. Goldberg said if a matter is referred to the Ethics Committee there is immunity and the likely hood the borough would surely be immune, that's a bunch of baloney. And if someone would be disbarred if that is the decision then perhaps they should be. Mr. Goldberg said if he gets in trouble then he should get in trouble. Mayor Siddons said he had no problem, Mr. Goldberg said he didn't want some mealy mouth letter, the letter should reflect that this is serious offense, a reprimand has been removed and this individual represented both clients. Mr. Goldberg said he didn't necessarily blame the Chief or Ptl Barstow I fault the attorney. Mr. Goldberg said that the Mayor had concerns also as this being in the paper and perhaps being a back door way of handling things, Mayor Siddons said that he agreed with Mr. Goldberg. Mayor Siddons said I don't know is he's aware if the things removed. Mr. Goldberg said the point is that it was, would stress that there is an appearance of improprieties on what he did, the fact that he represented both clients is clearly a problem. Mayor Siddons said he though that was the problem. Mr. Goldberg said he should think of the ramifications of that representation, that a reprimand would be removed that someone might think that there is unappropriated action going on here, the borough should not be treated like that, he said he didn't know Karl Mohl personally and have no axe to grind. Mayor Siddons said they had asked numerous times if the reprimand had been removed. Mr. Goldberg said the Chief let the Committee to believe that the reprimand was removed on the advice of the Borough Attorney and after discussing the matter with him it was found to be untrue, he blamed Charlie. Mr. McKelvey said that the Chief if playing games, Mr. Goldberg said it is part of his



personality. The Clerk asked how many sets of files are being kept, and has any checked the personnel files in the admin. offices. Mrs. Bottomley would like to reiterate to the ethics people what happened and see there response. Mr. Goldberg said I think they owe us an explanation even if they are not going to take action, so we can close out our files, motion second by Mr. McKelvey, he asked if Mr. Goldberg was satisfied, Mr. Goldberg said we are not trying to hang anybody here I think we have an obligation here. Mrs. Kaplowitz with the fact that there might be a copy in the personnel files does that hold. What are you considering the personnel files, Mr. Hutchinson said it didn't not matter, it's within the Chief's authority to remove the reprimand. Mayor Siddons said if he was going to remove from his they should asked that it is removed from all files. Mr. McKelvey this motion is to have the attorney send a letter to the ethics committee.

Roll Call Vote:

Mr. Gabriel	No	Mrs. Kaplowitz	Yes
Mrs. Bottomley	Yes	Mr. McKelvey	Yes
Mr. Goldberg	Yes	Mr. Ryan	Yes
		Mayor Siddons	Yes

Mayor Siddons noted the second item, the Police Committee can consist of only two members of council, Mayor Siddons asked that the members decide, MR. Ryan said he would step aside, and a resident would be appointed at the next meeting, he would like to find a retired or current police officer.

Mrs. Bottomley said the negotiating committee met there were some changes made, Mr. Hutchinson said the one major change is that there salaries are higher when first talked about the base salary from 1991 is 6% higher for two of them, the cost approximately \$2,000.00. Mayor Siddons said the other change is the Holidays have been cut from 13 to 11, they changed 3 and eliminated 2, there is no longer Good Friday and Election Day. Mr. Hutchinson said this only pertains to the Police Department and does not amply to the Employees, the Mayor said he would like to get these on the table, we have one other employee to negotiate with and that is the Clerk, Mrs. Bottomley asked if this has started, Mayor Siddons asked that she assist him. Mrs. Kaplowitz said she has an individual who is interested in cleaning the library.

Mr. Ryan asked the attorney if there is a bill designating that if you are a Sgt. or Lt. in the police department you must make a certain percentage over the highest base salary. Mr. Hutchinson not that he is aware of, but there is a law that the Chief has to get at least 5% more than your next highest paid officer. Mr. Hutchinson said that Mike White wanted to put into the agreement that he wanted to become a lieutenant and part of the agreement is that if gets the promotion there will be no salary change, that if the council felt comfortable promoting him without financial ramification, MR. Ryans concern is some bill may be coming would mean that we would have to pay him. Mr. Gabriel asked what would happen to the sergeants position. Mr. Goldberg said they are trying to make a higher archei, all that you read about is you do

away with the higher archei this department wants to have more. Mayor Siddons asked if there was anything else, Mr. McKelvey asked what does this mean the Friday after Thanksgiving a legal holiday. Mr. Hutchinson said it's not a legal holiday, but one that the employees currently get, Mrs. Bottomley said it was really neat they had 13 and now there at 11. Mayor Siddons said he explained for a long period of time the borough never gave salary increases, what they received was additional PERCS, when we started looking at contracts if you check the list it is close to most municipalities. This list is the lowest, Mrs. Bottomley said that Mayor Siddons had done some pretty smart things, the sick leave and putting limits on for the future, and took advantage of decreasing the holidays, I didn't know why we didn't say nine, the Mayor said if had known it was going to be that easy he would have said four. Mayor Siddons said we have a limit of 158 sick days this buy out 70 at 1/2 pay, we were stuck in a position had anyone left with accumulated sick days that contract would have entitled them to that money, even though the practice was we were not paying them. When they retired we did pay them, both Wes and Asbury were bought out twice. Motion to adjourn the closed session made by Mr. Gabriel second by Mrs. Bottomley at 9:50 p.m., voice vote, all in favor.

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Respectfully submitted, Ellie Rogalski, RMC

Closed Session

March 26, 1992

The following were present for the closed session:

Mayor Siddons, Mrs. Kaplowitz, Mrs. Bottomley, Mr. Goldberg, Mr. McKelvey, Chief Robert Burger, Borough Attorney Hutchinson and Borough Clerk.

Mr. Goldberg said that Chief had requested a Closed Session, the Police Committee has been reviewing the application of a Drew Kariman. Chief Burger feels that he is an excellent candidate to fill the position left vacant by Joel Baldwin. The Police Committee has considered the applicant, the only reservation being that he resides in the Highlands and that may be a distance to travel for a part time position. Mr. Grigg had been contacting the Highlands Police Dept., Mr. Grigg was unable to get any information from the Chief, the committee recommended unanimously that provided that a okay report was received, they would recommend that the borough hire the individual. Mayor Siddons asked if there were any qualified applicants within the borough, the Chief responded no. Chief Burger this is a difficult time of the year to hire a part-time officer, Mr. Kariman has no trouble with the commute, he is qualified as a full time officer, he has the experience and would suit are needs very well. Mrs. Kaplowitz asked how long was he employed with the Highlands, Chief Burger responded from 1986-1991 and prior to that with the NJ State Marine Police 1985-1986. Chief Burger said what had happen is Mr. Grigg contact the Highlands for information on the individual and was unable to get any information, they cannot give that information out, he was referred back to Chief which he never did. Chief Burger said when he spoke to Mr. Grigg he assured him that he had finger printed him and have his criminal record and would review what information he could, the policy is that the information is not given out to a civilian. Chief Burger said we did a complete investigation. Mr. McKelvey asked why this information is not available, Chief Burger said it's personnel, Mr. McKelvey responded "bullshit". Mr. McKelvey said he didn't know if Chief was hiding something now, Mr. McKelvey said something wrong. Mrs. Kaplowitz said you just can't give that information out to anyone not knowing who the person is. Chief Burger noted that he can not reveal if anyone has a criminal record or not. Mr. Goldberg said that is confidentiality. Mr. McKelvey asked why does he want to come here, the only purpose was Mr. Grigg was to find out for us. Mr. Goldberg asked the Attorney if the council could formally request information. Mr. McKelvey said this is some kind of closed Mafia you're running, Chief Burger said he understood that Mr. Grigg asked if he had a criminal record or if he had any problems, that type of information cannot be revealed. Chief Burger said Mr. Grigg was told to come back and ask him, Chief Burger said if you don't trust my opinion then don't hire him, that's what it comes down to. Chief Burger said Part-time officers are not required to have psychological testing, this is up

to the council it's only fair to the applicant, he should be appointed pending the outcome of the examine. Mr. Goldberg asked that Mr. Hutchinson send a letter to the Highlands inquiring if he was good employee and would you recommend hiring him for a position. Mr. McKelvey said he always check references when he was hiring.

Mr. Hutchinson said the employee agreement we gave out tonight, we met with them on Monday and there have been changes and well as exclusions. Mrs. Bottomley said there are some attachments, Mr. McKelvey asked if this were new, these incorporate the percentages. Mrs. Bottomley said some of the things that are missing are the qualifying licenses or certification and receive an extra stipend. Mr. Hutchinson said you will be provided with a list of these certifications and how much each person gets for having them. Mr. Hutchinson each employee receives a clothing allowance for \$450.00. Mr. McKelvey asked what does that mean, Mrs. Bottomley said there is the same thing in the police agreement and they have to go to the police store to buy their equipment, she wants to know what the clothes are, that they are purchasing. Mr. McKelvey said he wasn't very happy with the claus in the police contract that after 1993 the clothing allowance goes up according to CAPS, Mr. Hutchinson said that will be a lesser increase than the way it is now. Mrs. Bottomley said by doing that you never have to discuss a number again. Mr. McKelvey said the other object that he has and he would like to make the statement that he will vote yes on these raises this year, but he will not vote yes anymore, with the condition of the county he believes we have to go into a freeze. We can't afford this he will vote yes this time and he will not vote for increases again because it is time to stop, Mrs. Bottomley said she also agreed and this had been discussed and if there are increases it has to be limited to the CAP. What has happened in the past other council gave away everything except dollars and this contract is a buy back to get back at some normal working conditions, there were too many holidays and they didn't get money, both of these negotiations did the opposite they are expensive and they make it smooth for the next people to negotiate. Mrs. Bottomley said She hoped that future negotiators understood the thought process here, no more days, no more clothes, no more holidays. Mayor Siddons said lets get away from where we are heading. Mr. McKelvey said we have to stop, and he realized that the cost of living is going higher, but he had to tell his feelings. Mayor Siddons said there is just no money out there.

Motion to adjourn this closed session made by Mrs. Bottomley second by Mrs. Kaplowitz, voice vote, all in favor.

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Respectfully submitted, E. Rogalski, RMC

April 08, 1992

Closed Session

For the record the following were present for the closed session. Mrs. Kaplowitz, Mrs. Bottomely, Mr. Goldberg, Mr. McKelvey, Mr. Ryan, Mayor Siddons, Borough Attorney Hutchinson and Borough Clerk.

Mr. Goldberg recommended that the borough hire Drew Kariman as a Part-Time Patrolman, to replace the vacancy created by the resignation of Joel Baldwin. Mr. Goldberg noted that all references have been checked as well as his qualifications. Motion to adjourn the closed session and return to the open session to take formal action made by Mrs. Bottomley second by Mr. Goldberg at 9:35 p.m., voice vote, all in favor.

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Respectfully submitted, E. Rogalski, RMC



For the record the following were present:

Mrs. Kaplowitz, Mrs. Bottomley, Mr. Goldberg, Mr. McKelvey, Mayor Siddons, Borough Attorney, Borough Clerk and Mr. Gabriel.

Mr. Hutchinson asked Mr. Gabriel to give some back ground information on the case. Mr. Gabriel said it concerns the garage located the corner of Central and Lake Avenues. it has been there since 1959, it was built with an approved site plan, and has never been an abandon use. New tenants applied for a CO and I issued a CCO which is a Continued Certificate of Occupancy for the same use. The Planning Board claimed they needed a site plan for it, they claim every time the CO changes a site plan is required, which is unheard of any where else. Mr. Hutchinson said the CCO was issued, another property owner filed an Appeal to the Board, appealing the determination of the Zoning Officer. The matter is now in front of the Zoning Board on the issue whether there was a valid non-conforming use, or whether an addition use variance and site plan is required. There is a hearing in front of the Planning Board on May 12th. Mr. Gabriel raised concerns in terms if he should be represented by counsel, he feels he should be. The problem is if it goes to the board and the board makes the determination that the CO should not have been issued, then there is a problem. Mr. Goldberg asked if that was not the same place that was subject of variance application by a place called Gary's Garage. Mr. Gabriel said the Planning Board heard an application with no denial from me, the denial from me was for a car repo-center. Mr. Goldberg noted he was at that hearing, they wanted to use that place as a garage. Mr. Gabriel said they never got a denial to go in front of Planning Board. Mayor Siddons said the question is why did they go to Planning Board with no denial from Mr. Gabriel. Mr. Goldberg noted the Planning Board said they needed a variance and isn't that the same property. Mr. Gabriel said yes it is the same property. Mr. Goldberg said they went to the Planning Board for a variance and were denied for the same use, they had certain stipulations. Mr. Gabriel said he gave a denial for a use which was going to be an auto repair shop and repo-center, which was going to be open 24 hours. Mr. Goldberg thought the use changed and it couldn't be use any more, Mr. Gabriel asked when did it change. Mr. Hutchinson said that is the issue, the determination by the Zoning Officer was there was a valid non-conforming use and there had not been an abandonment. The Planning Board acting as the Zoning Board and the person who has appealed Mr. Gabriel's decision disagrees with that, they say there was an abandonment of that prior non-conforming use. The Zoning Board is having a hearing on that issue on May 12th, the reason we are here is Mr. Gabriel would like to have special council appointed to represent him at that hearing. Do you have to have special council appointed, the answer is no, it is a good idea. The concern is if they over turn Mr. Gabriel's decision, then we run the risk of the people who have the CO, and have been

operating can turn around and sue, that is the issue before you this evening. Mayor Siddons said if they over turn the decision does that come to council, Mr. Hutchinson said no. Mr. Gabriel said the Planning Board cannot over turn a CO, it has to go to the Uniform Construction Board of Appeals in Ocean County. This Planning Board, should read the Zoning Ordinances, they have the worst track record. Mr. Goldberg asked, we would be hiring an Attorney on behalf of Mr. Gabriel, Mr. Hutchinson said the concern is the interest of the Planning Board and the Borough could conflict. Suppose a determination is made by the Planning Board, Mr. Gabriel you made an error this required a use variance, this required a site plan, they should not be operating this site, shut down now. The occupants turn around and say, the Zoning Officer issued a CO to operate this business I relied on that and now as a result of that they turn around and sue Mr. Gabriel. Mrs. Bottomley said Al representing the borough issued a CCO, how in the world is this getting stopped, why is this going to be dragged on. Mr. Gabriel said I couldn't answer that. Mr. Hutchinson said it isn't the applicant that is going to the Planning Board, it is an interested property owner, there is a provision in the Land Use Act that you can appeal a determination or decision of the Zoning Officer to the Zoning Board of Adjustment. Mrs. Bottomley said they are acting on a complaint, and who have they notified, they asked you to come on May 12th. Mr. Gabriel said not officially yet, I'm waiting for notification. Mr. Goldberg said what if Mr. Gabriel acted beyond his authority aren't we representing against ourselves, Mr. Hutchinson said yes but the risk is still there, if they over turn the CCO the potential exposure to the town is the first applicant, the one given the CO by Mr. Gabriel can turn around and sue the town. Mr. Hutchinson said for that reason Mr. Gabriel has felt he should be represented by counsel, Mrs. Bottomley noted we are really not representing him, we are representing us. He is asking for special counsel, there is justification to protect the borough's interest as well as his. The council has to make the decision if they want to appoint, there is justification for him having his own special counsel appointed to in fact protect the borough's interest and his interest at this hearing. The decision you have to make is if yo want to appoint someone, do you have to no. Mr. Goldberg asked why can't the initial applicant come in and sue everyone also, Mr. Hutchinson said he will, I'm sure. Mr. Gabriel said he has a good case against the Planning Board because they have no denial. You would be surprised the applications they accept with no denials. Mr. Goldberg said if he didn't need a variance why did he go to the Planning Board, Mayor Siddons said that's what Planning Board thought. Mr. McKelvey asked this man is an employee of ours and he represents us, therefore don't we hold some responsibility here. Mr. McKelvey said the Planning Board is on their own, Mr. Hutchinson concurred on this application they are on their own and that's the way it should be. Mrs. Bottomley said shouldn't we have been notified that there was a problem first, and we should not consider this until there is an issue. Mr. Gabriel said there is going to be an issue on May 12th. Mrs. Bottomley asked if they ask Al to go, does he have to go, don't go. Mr. Gabriel said this



has to be cleared up once and for all. Mr. Hutchinson, it's a good idea that he go, beside whether yo agree with the actions the fact it was done as a representative of council. It is a good idea as a representative go and defend what was done. Mr. Goldberg asked why can't he do this on his own, Mayor Siddons said I don't know. What if the situation concerned a Police Officer we are required to provide them with an Attorney. Mrs. Bottomley we don't know if there is a problem. Mr. McKelvey said if he goes without an attorney can he walk out, Mr. Hutchinson said the hearing will continue. Mr. Hutchinson said do we have a problem yet and is the borough being sued for money damages, if that's what yo mean as a problem no. Mrs. Kaplowitz says the only thing is that if the other parties have attorney's they can put him down. Mr. Gabriel said there are five attorney's involved. Mayor Siddons said would it have something to do with setting the record, Mr. Hutchinson said it's not required the question is it a good idea given the fact that acting as a borough official he is issued a CCO and now he is being challenged and if the challenge prevails in front of the Planning board there is likely to be a law suit in which the borough and Mr. Gabriel will be named. Mr. Goldberg said how do you figure, the applicant who filed the appeal could also sue, I'll give an example, I lost at the Planning Board and filed suit at Superior Court. Mr. Hutchinson said that may happen, the person appealing if the board up holds Mr. Gabriel' actions, this person can file an action. Mrs. Kaplowitz said he needs representation, Mr. Gabriel said the Mayor and Council should take a long hard look at the Planning Board. Mr. Hutchinson said we should go out in public session and vote. Mr. Gabriel proposes that Jimmy Cotta represent him at a cost of \$500.00. Mr. Goldberg said the Planning Board has a lot to be desired, and they are a misguided board.

Motion to adjourn the closed session at 10:05 p.m., voice vote, all in favor.

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Respectfully submitted, E. Rogalski, RMC



For the record the following were present; Mrs. Kaplowitz, Mrs. Bottomley, Mr. Goldberg, Mr. McKelvey, Mr. Ryan, Mr. Warfield, Mayor Siddons, Borough Attorney T. Savon for Mr. Hutchinson, and the Borough Clerk.

Mr. Goldberg referred to the closed session of the meeting of 2/27/92, it was decided at that time to turn the matter regarding Karl Mohel for review by the Ethics Committee.

Mayor Siddons asked Mr. Goldberg if the reprimand had been removed from the personnel files was this checked as requested. Mr. Goldberg said he does not know Chief Burger said it was, and there is no reason to say it wasn't. The concern of the council was Mohel was representing somebody to get a reprimand out and representing the guy who took the reprimand out. In Mr. Goldberg's opinion it is a clear conflict, and we asked that the matter go to the ethics committee. The Mayor felt that Mohel was ambulance chasing by representing the Police Chief's, and getting his name in the paper. We thought it was serious and that the borough was not being treated correctly by Mohel. I also think the borough is not being treated correctly by Charlie. Mayor Siddons asked if we should appeal the decision, we have the right he asked if council wanted to look at it in more depth. MR. Goldberg said he thought the matter should have been investigated in the first place and that is why se sent it out there. He thought the Steve Secare just said with the information submitted to him he didn't think that anything should be done. Mr. Goldberg also said that he is not happy with Charlie's representation

that's the subject that he's on, then he will get to the other part which is what this council wants to do with it. He stated that he didn't think that Charlie represented the council correctly on this issue and he has doubts about whether he got the letters on other things. We should not have to keep a diary to find out if Charlie got a response. We pass things out there and we assume that it's done. MR. Savon said it is entirely unfair to bring up one issue and cast dispersions on his representation on every other issue. Mr. Savon said I don't know why it wasn't passed along and you don't know why either. Mr. Goldberg quoted from prior minutes, he said he is not suggesting that this makes Charlie a bad attorney, what I'm suggesting is that this better not happen again. Mayor Siddons said he would agree if this happened on two or three occasions he would say, this is the only time he ever remembers seeing anything like this, in fact if you hadn't mentioned the date. Mr. Savon asked that Mr. Hutchinson be given the opportunity to respond. Mr. Goldberg said he expected him to be here tonight, we are the elected officials in this town and frankly he doesn't care how the rest of the council votes, everyone has their own vote. Mayor Siddons asked if the council wants to continue on, Mr. Goldberg said he would make a resolution that we do, because I thought there was an ethical violation and he didn't think it was investigated. Let the committee make that determination. Mayor Siddons asked for a formal resolution in here we can do this in

closed session.

Motion made by Mr. Goldberg second by Mr. McKelvey to continue to have the aforementioned matter investigated further.

Roll Call Vote:

Mrs. Kaplowitz	Yes	Mr. McKelvey	Yes
Mrs. Bottomley	Yes	Mr. Ryan	Yes
Mr. Goldberg	Yes	Mr. Warfield	Yes
		Mayor Siddons	Yes

Mrs. Bottomley said we started to talk about the employees contract and almost voted on this, and there were two attachments, one is for the certifications for borough employees, and the other a list of clothing for public works.

Mrs. Bottomley said there should be a list of clothing, that we would attach to the contract. Mrs. Bottomley reviewed the list. The second attachment is the list of certifications and licenses to do jobs within the municipality. Mayor Siddons said we don't know which ones we need. Mrs. Bottomley said we agreed to take all of these as applicable courses and certificates we were going to compensate them for the highest one in their field. Mrs. Bottomley said if they had T1 they would get \$2,000.00. If a we had two public works employees and one was certified and one went out and got certified the next certification we'd give him \$2,000,00. Mayor Siddons said it's a one shot increase, what has happened until Wayne has become qualified we have had to pay for outside people to work. Mr. McKelvey asked about the certifications paying an additional \$1,000.00 for somebody else and our they annual, if they are he will not vote for it. If it is every year you are talking for one license in ten years \$10,000.00. Mrs. Bottomley said it also says in addition to the salaries set forth the employees may receive additional stipend for additional licenses and certifications held by the employees.

Mr. Warfield said you are increasing their salaries. Mrs. Bottomley said if you have two employees but one has his certification I don't have to hire an outsider to do a portion of the similar job. What we wanted to do was compensate him for going to get the certification. Mr. McKelvey asked if we pay for the certification to start out. Mayor Siddons answered yes. Mr. McKelvey said we pay for the guy to go to school and then we are going to give him \$2,000.00 and this is going to be annual, Mayor Siddons said it never goes on his base salary. Mr. McKelvey said in 10 years it will be \$20,000.00 for the same license. Mr. Ryan said you would have to bring someone in anyway for an outside service. Mr. McKelvey asked who is doing it now, Mayor replied Wayne. Mayor Siddons said we are paying George Althouse for signing the C1, for signing the collection reports. Mr. Ryan what the service costs on a yearly basis, Mayor Siddons said \$2,000.00 per year. You have to have a certified person to preform these jobs. Mr. McKelvey said this is going to become a thorn in everybodys side as a salary will be attached, he said he is not really happy with the salary set up for the municipal employees. Mrs. Bottomley said we spent a lot of time and these are the items left over. Mayor Siddons said they agreed and the two items

missing. Mayor Siddons said some of the items should not receive stipends for, and I don't think we need all the certifications. Mr. Goldberg asked if this is what we discussed before. Mr. McKelvey asked if this was equal with the neighboring communities, Mayor Siddons said below. Mayor Siddons asked to go through the list and see what is needed. Mr. McKelvey asked to be copied so if could review, Mrs. Bottomley asked that it be put on the agenda for the following meeting.

Mr. McKelvey said he would like to know the actual hours that employees work and when do they do the work he feels he should know those things.

Mayor Siddons said he would like to see Joe Indiero as an additional badge checker if he can do it.

Motion to adjourn closed session made by Mrs. Bottomley second by Mr. Goldberg, voice vote, all in favor.

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Respectfully submitted, E. Rogalski, RMC



Closed Session

June 25, 1992

For the record the following were present:

Mrs. Kaplowitz, Mrs. Bottomley, Mr. Goldberg, Mr. Ryan, Mr. Warfield, Mayor Siddons, Borough Attorney Hutchinson and Borough Clerk.

Absent, Mr. McKelvey.

Mrs. Bottomley said everyone received a package for the employees agreement. There was a question said that there would be a stipend for certain certificates, it was decided that there will not be one, what has to happen that for all the certificates they should be considered in their salaries. The jobs themselves have to consider that the license is part of the job. But it is not in this years contract. There is value to these certificates but we don't have that. Some people have them, and some already get them Mayor Siddons said Dave Wilber, do you want to add another \$1,000.00 to his salary. Mrs. Bottomley said he gets his certification, we shouldn't pay him \$1,000.00 his job should consider that \$1,000.00 as part of his salary because he is certified. Mrs. Bottomley said various employees have to be certified to do their jobs. She said Mr. Goldberg didn't like the 6%, we finally got to six. The questions were Mr. McKelvey's, we were going to negotiate separately with the clerk but they never got done, so she will be added to the group. The only employee not in the 6% group was John Adams who went to a set fee. Mrs. Bottomley said if we vote and suggested that we accept the agreement with the increase of 6%. Mr. Warfield asked if these salaries reflect the 6%, and what are the hours, and states this covers the bargaining unit for full time employees and there are some part-time employees in this group. Mr. Warfield asked if we pay for lunch hours, Mrs. Bottomley said the police get paid for lunch the rest of the employees do not. Mrs. Bottomley said when you count the 40 hours for the police that hour is part of there lunch and their on duty, and the rest of the employees even if working do not get paid. Mayor Siddons said every one in the borough is basically 40 hours full time with the exception of the people who are part time who are part of the contract. Mr. Warfield said he thought it was the law that you have to give people time off for lunch, Mayor Siddons said this is something we should look into if we should give them 1/2 hour, that is something that should be developed. Mrs. Bottomley said this has to do with a 40 hour week and the 6%. Mr. Warfield asked what the total percentage of the budget is salary and benefits, he noted it was around 41%. It seems that in most municipalities it runs around 60 to 70%.

Mr. Goldberg said he received Mr. Hutchinson's letter not following up on the Karl Mohel incident. He stated that he is not happy with the legal representation that this borough is receiving from Gilmore & Monahan. What happened with the Wanamaker thing was a fiasco, ad may have been because we weren't getting proper legal advice. He said he also didn't like that we have a borough

attorney that doesn't think that we are the governing body. Mr. Goldberg quoted from prior minutes, "he didn't have the stomach to sent the letter in the first place". Then he sent the letter reluctantly, he then go a response in March that he didn't share with the governing body until May. Mr. Goldberg said he was not comfortable with the representation of Gilmore & Monahan. Mr. Goldberg asked council if Gilmore & Monahan is on the list for appointments he urged them to vote no.

Mr. Hutchinson said you are entitled to your opinion, and the letter speaks for itself. As far as the issue of the letter, he felt there was no basis for it, and he would not do something was silly. Mr. Hutchinson said he apologized for not forwarding the letter. Mr. Goldberg said the point is what happen with the Wanamaker Lease did not reflect well on the borough and had the borough had the proper representation we would not have looked poorly.

Mr. Warfield said the attorney sent in Mr. Hutchinson place acted poorly.

Mayor Siddons said it would have been nice if we would have had the opportunity to work out the details prior, we could not do this because they had a deadline. Mr. Goldberg said that group it partially to blame.

Motion to adjourn made by Mr. Ryan second by Mrs. Kaplowitz at 10:15 p.m., voice vote, all in favor.



Respectfully submitted, E. Rogalski, RMC



Closed Session

July 08, 1992

For the record the following were present: Mayor Siddons, Mrs. Bottomley, Mr. Goldberg, MR. McKelvey, Mr. Ryan, Mr. Warfield, Attorney Mark Mutter and the Borough Clerk. For the record the following were absent: Mrs. Chambers.

Mayor Siddons said the first item is the status of the Building Inspector, he had asked that Mr. Mutter contact Mr. Gabriel to see if he had any legal opinion other than the information received. Mr. Mutter from the Dover Twsp. prospective he has tenure by statute 52:27D-126b. Mr. Mutter said understood Mr. Gabriel holds the following positions; Construction Official, Sub-Code Official, Zoning Officer, Fire Official and Code Enforcement. Mr. Mutter said Mr. Gabriel will obtain from the Department of Community Affairs written confirmation from Vivan Lopez, that he does have tenure. The only way you can remove a tenured employee is for cause. Mr. Mutter said if there was a formal roll call vote on July 01, it would not have any legal effect because he has tenure. Mayor Siddons said he has never seen the Sept. 1991 law nor had he been told. Mr. Warfield questioned that Mr. Gabriel had handed in his resignation several years ago pending the finding of a replacement. Mr. Mutter asked if it was accepted. Discussion as to his resignation as Zoning Officer. Mr. Mutter said zoning officer is different and never get tenure. The tenure applies to the Construction under Chapter 52. The Clerk will research the aforementioned letter of resignation during 1990.

Mr. Goldberg said Mr. Gabriel held these positions while he was on council and he believed this was illegal, and once he took the seat on council he forfeited any tenure. Mr. Goldberg asked is that was a valid position. Mr. Mutter said that if there was and illegality it should have been litigated then. Mr. McKelvey asked that any appointment be held off until the resignation is researched. Mayor Siddons asked that Mr. Gabriel resume duties as Building Inspector, subject to the following; 1. proof of tenure, 2. no resignation ever received. Mr. Mutter said the time to have challenged the legality of the aforementioned was then. Mr. Goldberg asked if the County or State could come in, Mayor Siddons explained that would require an interlocal agreement, and would take a period of time. Mr. Mutter said it is his opinion that Mr. Gabriel has tenure, and no vote is required. Mayor Siddons asked Mr. Goldberg to contact DCA and asked if he forfeited tenure while on council, at some point in time we can bring this to a conclusion.

Mayor Siddons said Mr. Adams had been appointed as Chief Financial Officer last July 1, 91, after conversation with Daniel Kaminski, DCA Management Certification Unit. Mr. Mutter said by statute you must have a CMFO, Mr. Adams was first appointed October 1990, and reappoint July 01, 1991, the vote to reappoint on July 01, 1992 failed. The statute was amended in 1991 P.L. 1991 Chapter 175 (June 26, 1991 effective 60 days ie August 26, 1991) The appointments are suppose to go back to the first of year of 1991, does he get the grace period, the state is waiting for a ruling for

the Attorney General. The DCA's opinion because this statute was not in effect when John Adams was appointed on July 01, 1991, the statute does not apply, and go by the municipal ordinance. The ordinance reads one year. Mr. Mutter said it was his opinion that Mr. Adam's appointment on July 01, 1991 was only for a period of 1 year till June 30, 1992. Action has to be taken on the CMFO, if action is taken now the statute is applicable. Mayor Siddons said we should take action this evening, in the mean time he is still employed by the borough until a successor is found.

Mr. Goldberg noted that in regards to Mr. Hutchinson, he had not been impressed by his expertise on various issues. He thinks we could get a quality attorney at our going rate. Mr. Warfield concurred. Mayor Siddons said he had been pleased with most of Mr. Hutchinson's services, the borough has several ongoing projects with him (ex. revised Code of the Borough, pending law suit with Tinton) it is necessary that we retain him for those issues. Mrs. Bottomley asked if a new attorney were appointed would Mr. Hutchinson keep those tasks. Mr. Mutter said it is a policy call. Mr. McKelvey is it not possible that an attorney could waive his fees to revenue to bring himself in line to do the job. Mr. Ryan asked if the Mayor had any other applicants and had Mr. Hutchinson been asked if he is still interested. Mr. Goldberg asked why hasn't the Mayor thought of another candidate. Mayor Siddons said he had said he would put these appointments up again. Mr. Mutter said under the Faulkner Act after 30 days if the Mayor's nomination fails then it goes to council, it is with the advise and consent of council. Mayor Siddons said if the two don't go this evening, Mr. Mutter said the Attorney and CMFO you have to have them by law. Mayor Siddons said if Mr. Hutchinson does not get approved this evening he will ask that Mr. Mutter fill in. Mayor Siddons said regarding the treasurer he is in until such time as someone else replaces him.

Motion to close made by Mr. Goldberg second by Mr. Ryan, voice vote all in favor.

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Respectfully submitted, Ellie Rogalski, RMC

Closed Session

July 23, 1992

For the record the following were present: Mrs. Bottomley, Mrs. Chambers, Mr. Goldberg, Mr. McKelvey, Mr. Ryan, Mr. Warfield, Mayor Siddons Borough Attorney Mr. Mutter and the Borough Clerk.

Mayor Siddons said we will be discussing the Attorney situation. Mr. Goldberg said he wanted to discuss the Mr. Gabriel situation too.

Mr. Goldberg said the Police Committee met on 7/20 and reviewed the application of Brian Goheagan for the position of Part Time Office. Mr. Goldberg and Chief Burger interviewed the individual, the committee felt that they wanted to do more back ground investigation and asked that this be held. One member Jack Robinson thought we should look into the background a little more. Mr. Goldberg reviewed his qualifications, he would be working 20 hours or less a week. Mr. Goldberg asked Mr. McKelvey's opinion, he said the committee agreed to hold off until a through investigation was made and one member had been asked to check into it. Mr. Goldberg said he didn't have a problem holding it for two (2) weeks, and if the Chief has a problem, I don't want him to think he can bring a candidate in here and ram him down our throat. Mr. Goldberg said he would like to move this by the next meeting. Mrs. Bottomley said she would accept the recommendation of the Police Committee.

Mayor Siddons asked that Mr. Mutter be excused, he then said he had given copies of Mr. Mutter's resume. Mr. Goldberg has given information about Pat Sheehan and also recommend Richard Walsh. Mayor Siddons said he talked to all three regarding experience. Mayor Siddons reviewed the qualifications of Mr. Mutter (resume on file).

Mayor Siddons said he contacted Pat Sheehan, he currently is Municipal Attorney for Berkeley Twsp. he assumed that position in 1991. He is involved with the Public Defenders Office and litigation, he has not had any other municipal experience.

Mayor Siddons said he contacted Richard Walsh, who was Borough Attorney and has about 15 years of municipal experience. His other partners are not involved with municipal law.

Mayor Siddons said they are all in the same billing rate from \$85.00 to \$90.00 per hour. He has talked to them and asked for questions.

Mrs. Chambers asked about Mark Mutter who is running for council in Dover Twsp., Mayor Siddons said if elected he would no longer be assistant Twsp. Attorney.

Mr. Goldberg said he is impressed that the Mayor contacted the candidates, he looked at the resume of Mark Mutter and he is a very busy person and maybe we would be a higher priority if with a small firm. MR. Ryan asked if any one was in town when Richard Walsh was attorney. Mrs. Chambers said he's a nice guy, Mayor Siddons said some of the problems the council had with Mr. Hutchinson not being forceful you can say about Mr. Walsh, he did get us into a number of lawsuits. Mrs. Chambers said she had talked to Richard and he is wishy, MR. Warfield said all he knows is that Mr. Walsh was attorney who did the Post Office lease. MR. Ryan said he was impressed by MR. Mutter's performance.

Mayor Siddons reviewed Mr. Mutter's resume and what he is involved with currently. Mr. Warfield said he has given Mr. Mutter several items and he has taken action on all. Mrs. Bottomley said no one has anything negative to say about Mr. Mutter. Mayor Siddons said he would prefer to appoint Mark at this meeting.

Mayor Siddons asked Mr. Mutter to come back into the session. The second item for discussion is the appointment of the Certified Municipal Finance Officer. The only recommendation is John Adams, he has done a good job and there may be some confusion with some of the things set up. Mr. Ryan said his activities are state mandated. Mr. Mutter said his position is required by state statute. Mayor Siddons said a lot of things are requirements of the auditor and a result of the audit. Mr. Warfield noted what he had against Mr. Adams is when a question was asked the respond was that's the way we've always done it. If he is the CMFO on the last budget report we received no explanation, he should provide us with a forecast of the budget and unless provided with information would vote against the budget. He should know all the answers and should keep us informed, we don't get copies of the checks we have no level of comfort and we are not getting it. Mayor Siddons said one of the committee items is to review the purchase order procedure and the encumbrance system under the state guidelines. The Mayor suggested that council meet with Mr. Adams to find out the information obtainable, the CSI program was purchased by a former councilmember, it is not complete the tax package was added this year. Mayor Siddons said he is hoping to have a monthly account balance. Mr. Warfield said John should have this prepared for the council. Mayor Siddons said that is in the budget which will contain some adjustments and we are still on a temporary budget.

Mr. Ryan said Mr. Adams is there on a Saturday morning and will answer your questions, Mr. Warfield said this should be prepared ahead of time and he should provide this information and not have to be asked. Mr. Ryan said the information is there all you have to do is ask for it. Mr. Warfield said I shouldn't have to ask. Mr. Goldberg asked Mr. Mutter if John had to be appointed for four (4) years. Mr. Mutter said by statute any action taken now it is a four (4) year term going back to January 01. Mr. McKelvey commented that this is a different council and didn't ask and we are different and want to know what is going on. Maybe he has to learn us. Mr. Goldberg asked why do we have to move this tonight he serves until a successor is appointed. HE has been voted down twice before why bring him back for a third time. Mayor Siddons noted that the law requires that we must have a CMFO, he is a hold over under local code only. The state has a problem with not enough CMFO's in the state. Mr. Warfield said he had a list of RMA's, Mayor Siddons said what you want is the CMFO's. Mr. Mutter said the list you have are accountants and explained that they are auditors and not operational. Mayor Siddons said they are few and far between. Mr. McKelvey said he had blamed Mr. Adams for the system and after a meeting with him he changed his opinion. Mr. Goldberg asked if we have been directed by DCA at this point. Mr. Goldberg asked why weren't we advertising, Mayor Siddons said you will going to supply us with recommendations. Mr. Goldberg said he didn't vote against the Mayor's appointments to try and get his in. Mayor Siddons said as Executive Officer of the community trying to appoint John again and if it is voted down, but he feels more secure that he is doing what is right for the community. Mr. Ryan said if we loose him we will have real problems. Mr. Goldberg asked when does he get tenure Mr. Mutter said during his second appointment.

Mayor Siddons said that Mr. Goldberg has requested that we discuss Mr. Gabriel's position, he also asked that we are not discussing an performance but the position. Mr. Mutter said he is this included discussion on his performance he would have to be notified.

Mr. Goldberg said he has nothing to say with his competence, it was his understanding at the last meeting that Mr. Gabriel resigned. A letter dated June 6, 1990, from Mr. Gabriel resigning from all his positions, excerpt read "I am submitting this retirement notice effective June 6, 1990". Copy the minutes state that the Mayor requested that no action be taken on this retirement until a replacement can be found. Mr. Goldberg said his resignation from the positions and thought his assertion of tenure, he has a problem with. Mr. Goldberg said he has additional problems with MR. Gabriel not with his performance but the position he holds. Mr. Goldberg said he contacted a Mr. Dill at DCA, he spoke with Jerry Grace, Mr. Grace is from the Bureau of Regulatory Affairs. Mr. Goldberg said he expressed his concern that while Mr. Gabriel was on council he was also the Code Official and held all those positions and this was a concern of his and thought this would void his tenure. Mr. Goldberg said Mr. Grace said it would not void his tenure, but it was a serious violation if it in fact occurred and that DCA has

very strict regulations that this should not have occurred and Mr. Gabriel's license could be revoked if someone wrote a letter calling this to the DCA attention. This violation of the regulations is so serious that he would probably be suspended pending an investigation, they may very well find that his license should be revoked. The name of Vivan Lopez Esq. who is in charge of Bureau of Regulatory Affairs, Mr. Goldberg said he hasn't written, he first wanted to report back to council. Mr. Goldberg said what you have is an individual who has resigned, held the position in conflict, and had been fired. Mrs. Bottomley said she remembered the issue happening prior, and a letter was provided in the mid 80's. Mr. Goldberg said at the meeting of July 1, 1989, Mr. van Vliet questioned Mr. Gabriel being the president of the council and holding the positions. Mr. Goldberg read from the minutes. Mr. Goldberg said he had requested the opinion letter from Mr. Monahan and no one could produce a copy of this letter. Mr. Goldberg noted after he spoke to DCA that they consider it a very serious conflict. Mr. Warfield asked if there was a statute on it. Mr. Goldberg said he thought it was their regulations which are set in conjunction with the AG's office. Mr. Mutter said they have regulations in the New Jersey Administrative Code, Mr. Gabriel position is established by statute in Title 52 where he gets tenure, then they refer to the Administrative Code. MR. Warfield asked if the action of the conflict is there a statute of limitations on that. Mr. Goldberg asked that question and was told that there is no statute of limitations on it. Mr. Goldberg said that Mr. Gabriel also came to his home and asked what the problem was. MR. Goldberg assured him it was nothing personal, and told him that he didn't think he had tenure and was in conflict when serving on the council. Mr. Goldberg noted that Mr. Gabriel responded that he agreed with him and the state will find that he was in conflict. Mr. Goldberg gave some back ground information, noting that he called Ocean County to get information on the handling of our services. Mr. Goldberg said that Mr. Gabriel approached him and told Mr. Goldberg he had heard that he had called the county to get him fired today. Mr Goldberg told him he was half right, we don't have to go to the county to get you fired. Mr. Goldberg said that the point is that he acknowledged that he was in conflict.

MR. Goldberg said his party is over, Mr. Gabriel was voted out by council. Mr. Goldberg said he didn't think that he held the position correctly that he asserted that he held, it was clear that he had a conflict. Mr. Ryan asked where are we going with this.

Mr. Mutter said he was asked to look into whether he had tenure as a Zoning Officer, after a review of the statute you do not get tenure as a zoning officer. Whether he has tenure as a construction official has no bearing on the position of zoning officer. Mr. Goldberg said he does not want to continue to let this man hold the position. Mr. Mutter told Mr. Goldberg that you are dealing with the man's lively hood and it's in his personal interest if adverse action is taken to him, he could go out and hire a lawyer and fight any action we would take. Mr. Goldberg

said let him do it. Mr. Mutter said it his view that you are dealing with the heart of his lively hood, that he would hate to have a motion passed that declares he no longer has tenure.

Mr. Goldberg said he would write a letter to DCA.

Mayor Siddons asked that all information be given to Mr. Mutter for his review. Mr. Goldberg said he didn't need permission to contact DCA.

Mr. Goldberg asked that a motion be made to accept the resignation, Mr. Warfield concurred, then he would not send a letter to DCA. Mr. Mutter said it would have to be determined whether this was a valid offer, and reminded that they are dealing with a man's lively hood.

Mr. Goldberg said he had spoke with Chuck Althright from Ocean County and the fee's are based on the permits. The county does not do zoning and they will need a contact person.

Mr. McKelvey asked if we could bring him in and explain that his license could be in jeopardy.

Mrs. Chambers said the man should know what we have found out. Mr. Mutter said he had not been asked to review the administrative codes regarding this situation. Mr. McKelvey asked if he could loose his license? Mayor Siddons asked that Mr. Mutter research this issue and come back to council with the information on the following items; 1. had conflict while on council & does it effect tenure, 2. whether the conflict would effect his license if reported to DCA, 3. and is the letter of resignation still binding.

MR. Goldberg said if this is held it will go on forever and asked that a motion be made to accept his resignation before Mr. Gabriel can withdraw the letter. Mr. Goldberg asked Mr. Mutter if a motion was made and passed where would that leave the borough. Mr. Mutter said you could end up in court and asked to be able to do the research. Mr. Goldberg said if he looses his license he would no longer have a job, this won't occur until the DCA receives a letter, we could call him in. Mrs. Bottomley said once Mr. Mutter comes back with answers if can pull out or have his licenses taken away.

Motion to close this portion of the meeting made by Mrs. Bottomley second by Mr. Ryan, at 9:30 p.m., voice vote, all in favor.

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Respectfully submitted, E. Rogalski, RMC





CLOSED SESSION

August 12, 1992

The following were present for the closed session; Mrs. Bottomley, Mrs. Chambers, Mr. Goldberg, Mr. McKelvey, Mr. Warfield, Mayor Siddons, Borough Attorney and Borough Clerk. Mr. Ryan was absent.

Mr. Mutter, Borough Attorney listed the items to be covered under Pending Litigation.

1. Municipal Complex
  - a. outstanding items to be completed

Mr. Hoppe and Mr. Gabriel will be putting together a punch list of items that are still not completed. Letter dated Feb. 1992 from Mr. Hutchinson to the FIA (Bonding Co.) no response ever received. Mr. Mutter asked that the list from Mr. Hoppe and Mr. Gabriel contain the following:

1. What is still outstanding
2. Price tag on each item

This information should be available to for the next meeting. Mayor Siddons said that a Maintenance Bond was to be provided for. If he is bankrupt can he provide a maintenance bond, and what value is that bond to us? The Borough still has approximately \$17,000.00 held from them. Mr. Mutter said it is important to find out if they are in bankrupt, all the information will be compiled.

Mr. Mutter said item #2 is the Water Tower, he just received copies of the contract and the bid specs, he will be reviewing the documents.

Mr. Mutter item #3, Mr. Gabriel's status. Mr. Mutter asked that the minutes reflect this discussion is regarding his specific job performance. This discussion is regarding non-job performance related matters. This can be discussed in executive session without him receiving the 48 hours notice.

1. At no time did Mr. Gabriel ever come to Jim Citta or any member of the firm of Citta, Citta, Mallard and Zabarsky for advice regarding employment status with the borough.

2. Research his offer which is two (2) years old to retire/resign whether they were still valid not having been acted upon. Mr. Mutter said it is his opinion those offers lapsed legally because they were not within a reasonable time. For an offer to be accepted it must be within a reasonable time.

3. Mr. Gabriel made the statement at the last meeting that on January 01, 1993, I retire. Mr. Mutter said that statement had a legal impact, what he did was revived his offer of two years ago. The old offer was dead but he revived the new offer and made a new

offer effective January 01, 1993. Mr. Mutter said the Mayor has had a discussion with Mr. Gabriel since the last meeting.

4. Mr. Mutter said the next question that was asked is if Mr. Gabriel was in conflict. Mr. Mutter was unable to get the opinion letter dated 1985. Mr. Mutter said there is numerous case law that establishes the doctrine called incompatibility of office. (Hollander v Watson) The case says when dealing with government it doesn't matter if the actual conflict ever existed in the real world, the doctrine of incompatibility applies. Mr. Mutter said it was his opinion that the doctrine of incompatibility of office did apply to Mr. Gabriel being a councilman and a sub-code official and a zoning officer.

Mr. Mutter cited (McCue v Antissell) you are suppose to give the person in this position an election that person is allow to decide which job do you want. Mr. Mutter said Mr. Gabriel wasn't given that right to choose, because the prior opinion said there wasn't a conflict. Mr. Mutter said he had not had the opportunity to review how this would effect his tenure. Mr. Mutter said he had spoke with DCA and they are of the opinion that Mr. Gabriel has tenure as a sub-code official.

Mr. Mutter said there is a new case that talks about the special rights a code official gets, the borough has to be very intelligent as to how this situation is handled.

Mayor Siddons said his discussion with Mr. Gabriel resulted in Mr. Gabriel asking that the Mayor see if he could get the county in to take over the department. He wanted out of everything. The Borough will have to take over zoning.

Mr. Mutter said he and the Mayor met and asked that a letter be drafted to Mr. Gabriel. Mr. Mutter read the letter.

Mr. Goldberg asked if a motion could be made to accept Mr. Gabriel's resignation immediately, so the resignation is accepted but he stays on until a successor if found. Mr. Mutter recommended that it be done by letter.

Mr. Goldberg asked why couldn't the resignation be accepted now. Mayor Siddons said he didn't feel safe until it's in writing.

Mr. Warfield asked why the borough couldn't accept his letter of retirement from July 1990, which was reactivated at the last council meeting. Mr. Mutter's opinion was that it was old and it lapsed and it wasn't acted upon, accept it now and it's effective when the Ocean County Board of Construction takes over.

Mr. Goldberg said he had spoke with Chuck Althercih, Mayor Siddons said he would like to sit down and see what is available.

Mr. Goldberg asked if we could accept this resignation this evening. Mrs. Bottomley asked that the letter state that a time

frame be included in the text, to include within seven days (7).

Mr. Warfield asked Mr. Mutter, before elected to council, he had contested an action taken by Mr. Gabriel. Mr. Warfield asked if he pursues this as a citizen not as a councilmember is that okay. Mr. Mutter asked as far as voting on this tonight. Mr. Warfield said he wants to pursue this other matter, Mr. Mutter asked if he were pursuing something privately, and you are asking for private advice. Mr. Warfield asked if it would impact the council. Mr. Mutter said if you haven't pursued any thing right, if you ended in litigation with Mr. Gabriel or the borough to some arbitrary decision, you could be found in a direct personal conflict of interest. Mr. Mutter asked if Mr. Warfield was trying to overturn a decision. Mr. Mutter said there are four (4) different types of conflicts; 1. financial, 2. personal, 3. direct, 4. indirect.

Mr. Mutter said that would be a direct personal conflict of interest, you could be hand cuffing yourself as a councilmember on any matter involving Mr. Gabriel. Mr. Warfield asked if it was best that he not pursue, Mr. Mutter said if you don't want to handcuff yourself as a councilmember. Mr. Mutter said he would not give advice on a private matter.

Mr. Mutter said he would present the letter to MR. Gabriel this evening and make the change with no written response within seven days.

Mr. Goldberg asked if Mr. Mutter had reviewed the letters regarding Mr. Mohl, Mr. Mutter said he had not. Mr. Mutter asked what is he suppose to do. Mr. Goldberg asked that it go further. Mr. Mutter said he will review the documents.

Mrs. Chambers asked to be briefed as she wasn't on council at that time. Mr. Goldberg chronologically reviewed the matter.

Mr. Goldberg said the last item is the recommendation of the appointment of Brian Geoghegan by the Police Committee, as a Part-Time Patrolman.

Mr. Warfield asked about the employees contracts and if they had been signed. Mrs. Bottomley said the agreement had been signed and agreed to with one change in a figure.

Motion to adjourn made by Mr. Goldberg second by Mrs. Bottomley, voice vote, all in favor.

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Respectfully submitted, E. Rogalski, RMC



Closed Session

August 27, 1992

For the record the following members were present; Mrs. Bottomley, Mrs. Chambers, Mr. Goldberg, Mr. McKelvey, Mr. Ryan, Borough Attorney and Borough Clerk. Mayor Siddons was not present.

This closed session was at the request of Mr. Goldberg.

Mr. Goldberg said Mr. Mutter was going to look into the Karl Mohl situation. Council on June 10th asked that it be followed through further. Mr. Mutter said he had all the correspondence between the Borough and Mr. S. Scare, Sec. of the Ethics Committee. Letters dated 12/18 and 3/9, final letter from Mr. Scare, stating that the Municipality has a right to appeal the decision, they did not think that there was any thing improper done. The Borough has a right to have an investigator assigned in order to conduct a indepth inquiry.

Mr. Mutter said he drafted a letter which he reviewed, all agreed to sent this out.

Mr. Mutter said he had reviewed the potential Tax Foreclosure list provided by the Collector. All the properties are vacant land with one exception a vacant dwelling. There is about \$30,000.00 in delinquent taxes. Mr. Mutter said he sends out a letter to the last known property owner, indicating that the matter has been turned over to the Municipal Attorney. The municipality after the 6 months has the right to foreclose. Mr. Ryan asked the cost of litigation. Mr. Mutter said his recommendation is to be aggressive and take it one step at a time.

Motion to adjourn made by Mrs. Bottomley second by Mr. Ryan, voice vote, all in favor.

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Respectfully submitted, E. Rogalski, RMC



CLOSED SESSION

SEPTEMBER 09, 1992

The following were present for the closed session; Mrs. Bottomley, Mrs. Chambers, Mr. Goldberg, Mr. McKelvey, Mr. Ryan, Mr. Warfield, Mayor Siddons, Borough Attorney and Borough Clerk.

Mr. McKelvey said he would like to hire an employe for the Public Works Dept., at the rate of \$7.25 per hour, 40 hours per week, temporary basis. Mr. Robert Elley will be used on the capital projects.

Mrs. Chambers asked when did certain employees become water & sewer and not borough employees. Mrs. Bottomley said the employees that are certified to do particular water & sewer jobs, they can do other things.

Mr. Goldberg asked if the jobs were advertised, Mr. McKelvey said sign was posted on the bulletin board.

Mr. McKelvey asked the council pleasure on hiring Robert Elley, this applicant was also interviewed by the Borough Superintendent.

Mayor Siddons said he would also like to look for additional help for the offices. All employees with the exception of the Clerk are part-time. Mayor Siddons asked the attorney if the minutes could be outlined and the tapes retained for 2 years. Mr. Mutter said this can be done legally. The minutes do not have to be done perbatium. Mrs. Chambers asked about the salary.

Mr. Warfield suggested that the borough check into RSVP.

Mr. Mutter updated council on the situation with Mr. Mohl, letter was sent. He had spoken with the older more experienced attorney's in his firm. They asked that Mr. Mutter indicated to the governing body that anything can happen from a regulatory perspective against the borough. There is always the potential that Mr. Mohl could file a civil lawsuit against the borough. Mr. Mutter said he had indicated this to the Mayor before the letter went out. Mayor Siddons asked Mr. Mutter to find out if we are potentially liable as a community, and what are the odds of a suit. MR. Mutter said there are 100% odds that he could do something.

Mr. Mutter said letter went to Freeholder Mancini, who heads the County Construction Department. A meeting was held with the Mayor, Borough Clerk and Mr. Zabarsky in attendance. The county will provide all the inspections except zoning and code enforcement. No charge to the borough, but the county fee schedule must be used, which is not negotiable.

Mr. Mutter said if the borough provides a municipal office with clerical support, the borough will receive 20% of the fees back.

Mr. Mutter said we have to take the schedules and see what the cost

is going to be.

Mr. Mutter said they could provide inspections 2 half days per week. Mayor Siddons said in discussion they said it could be two/three days before they could get out to the site. The other option is to provide an office here.

Mr. Warfield will develop a job description and advertisement for the positions currently held by Mr. Gabriel.

Motion to adjourn this session made by Mr. McKelvey second by Mr. Goldberg at 9:45 p.m., voice vote, all in favor.

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Respectfully submitted, E. Rogalski, RMC



CLOSED SESSION

SEPTEMBER 24, 1992

For the record the following were present; Mrs. Chambers, Mr. Goldberg, Mr. McKelvey, Mr. Ryan, Mr. Warfield, Mayor Siddons, Borough Attorney and Borough Clerk. Mrs. Bottomley was absent.

Mr. McKelvey reviewed two applicants for the Public Works Department, John Cain and Russell Wallboard, salary \$7.25, 90 Day Temporary.

Mrs. Chambers asked if physical were required. Mr. Mutter will look into it.

Mr. Warfield asked about discussing the replacement of Mr. Gabriel. The Clerk provided the revenues and salaries for the department. MR. Warfield reviewed this information and recommended that the borough go all county.

Mr. Warfield read the job description supplied by Mr. Mutter.

Mr. Ryan asked that a comparison be done on the fees currently charged by the borough compared with the fees that would be charged using the county fee schedule.

Discussion continued, the Mayor asked that this information be supplied.

Mr. McKelvey suggested that we advertise, Mayor Siddons said once the job description is developed then we can advertise. Discussion continued about the advertisement, and the qualifications for the positions. Mr. McKelvey said if this is not done by December we will be out of time.

Mr. Warfield said we have to come up with an add for a Zoning Officer and one to replace Mr. Gabriel with all the sub-codes.

Mayor Siddons said it's council's decision to place an add in the paper for the following:

1. Zoning Officer
2. Building Inspector
3. Code Enforcement Official

Mr. Ryan said Mr. Platt had advised him that the State of NJ has advised if not awarded the state will rescind the grant. He also advised that the bid better include the basement.

Mayor Siddons said all references have to be checked as well as all the documents. He also asked about the Clerk of the Works, he suggested that a proposal is requested from Mr. Hoppe.

Mrs. Chambers discussion on the additional salary for the Animal Control Officer, he was promised \$1,000.00 upon receipt of his certificate. He was promised a vehicle and the money and is at the

point of resigning as ACO. Mayor Siddons said there was no stipends given for certificates. Discussion that this was not a one shot deal, MR. McKelvey said if it was a one shot deal we were willing to give it to them. But not on a continuous basis. Mrs. Chambers said he was promised \$1,000.00, Mr. Ryan said give it do him. Mrs. Chambers said would bring him in and asked if he would accept the \$1,000.00 one shot deal. Discussion continued. Mrs. Chambers will ask Dave Wilber if he will accept the \$1,000.00 for certification as ACO, one time only.

Motion to adjourn the closed session made by Mr. Ryan second by Mr. McKelvey, voice vote, all in favor.

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Respectfully submitted, E. Rogalski, RMC

CLOSED SESSION

OCTOBER 14, 1992

FOR THE RECORD THE FOLLOWING WERE PRESENT FOR THE CLOSED SESSION; Mrs. Bottomley, Mrs. Chambers, Mr. Goldberg, Mr. Mc Kelvey, Mr. Ryan, Mr. Warfield, Mayor Siddons, Borough Attorney Mutter and the Borough Clerk.

Mayor Siddons noted that there is a problem with the Police Department Budget. This discussion will be strictly on the position of Chief and the responsibilities, not the individual.

Mayor Siddons asked the attorney;

1. What are the responsibilities of the Chief?
2. Is the Chief to maintain a budget?
3. Is the Chief to stay within certain guidelines?
4. What happens if budget is exceeded knowingly?
5. What are the responsibilities of Council?

Mr. Mutter asked that this discussion not get into the specifics regarding job performance of anyone, but be of the general nature regarding the obligations as a matter of law for Police Chief.

Mayor Siddons noted that the Borough will have to get a Clerk of the Works, there is some money available in the budget. Mr. Hoppe is unable to do it at this time.

Mr. Mutter stressed that the day to day operations of the Police Chief you can't get involved with that. The Mayor supervisors and administers all phases of the budget process as Chief Executive Officer. The Borough Council can establish ADHOC Committees (Police Committee) which can review operating budgets. The Chief runs the day to day operations of the department and is directly responsible to the council. Mr. Mutter said the Chief has several specific budget responsibilities under the borough code, day to day operations, establishing the duties and assignments of his personnel, maintain time sheets and payroll records.

Mr. Goldberg asked if the Chief Financial Officer should give guidance as to where we are in the budget. Mr. Goldberg said the budgeted amount this year was \$130,000.00 for S/W, last year budget was \$134,000.00. Discussion continued between Mr. Goldberg and the Mayor, who referred to the budget that was supplied by the Chief where he budgeted \$130,407.00.

Lengthy discussion continued, Mr. Goldberg said he thought this would be discussed at the meeting on 10/29, which Chief would be attending.

Mr. Mutter said the law has been changed when a budget item is over spent knowingly, it's a very serious offense. Discussion continued and a payroll analysis for that department be completed.

Mr. Ryan what is the council's responsibility and Chief's responsibility in this situation. Mr. Mutter responded the Chief and the CMFO should be called in and figure out how it happened and how it could be minimized, as far as the overage.

Mrs. Bottomley said both should be directed to come up with a cure.

Mr. Mutter said that Mr. Matt Leahey would be more than qualified to handle the pending litigation with Tinton Assoc.

Mr. Chambers - spoke with the Animal Control Officer who was promised an additional \$1,000.00, she would like to have this approved as not to lose his services. Council was polled and formal action will be taken.

Mr. Warfield noted that 15 applications have been received and reviewed 4 of which he has copied all members.

Motion to adjourn this session, made by Mr. Ryan second by Mr. McKelvey, voice vote, all in favor.



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Respectfully, E. Roaglski, RMC

October 29, 1992

CLOSED SESSION

Closed session convened at 9:45 pm.

For the record, the following people were present: Mayor Siddons, Ms. Chambers, Mr. Goldberg, Mr. McKelvey, Mr. Ryan, Mr. Warfield, Borough Attorney, Acting Chief White, Borough Treasurer John Adams, and the Borough Clerk. Mrs. Bottomley was not present.

Mr. Mutter said that George Hoppe had submitted a standard architect's agreement, which needs approval, for his supervision of the building of the EOC project. Mayor Siddons added that it is for \$6000.00 for the 6 month time frame, and would include Mr. Hoppe's usual architectural services, such as review of shop drawings, approval of pay vouchers, and change orders. The council had no problem with the agreement, and Mr. McKelvey agreed to accept the position of liaison for Mr. Hoppe.

Mr. Mutter brought up a matter of potential litigation for breach of contract due to the lack of heat in the municipal building. The Borough had previously authorized Mr. Matt Leahey to handle the matter. A letter went out from the attorney's office to the General Contractor, Tinton Associates, the bonding company, and the subcontractor directing the General Contractor to take care of the problem immediately or the Borough would have it repaired and the money spent on repairs would be deducted from any money still owed to Tinton Associates.

On the matter of the Police Department overrun, Mr. Mutter explained that Chief Burger had been hospitalized, and that John Adams had come to some initial conclusions regarding the police department budget. Mr. Mutter stressed that because the Chief was not present, nor had he been notified that he would be discussed, the Chief's specific performance as an employee of the Borough can not be discussed, but only general matters.

Mayor Siddons said there was a problem with the Police Department salaries and wages. He had received information based on three sets of payroll records of the Police Department, the report of which he read aloud.

Sgt. White said that as of November 6, 1992, the Police Department would be converting back to 8 hour shifts, as it was shown to be a more economical form of scheduling than the current 12 hour shifts.

Mayor Siddons said that based on information from Sgt. White and John Adams, they are expecting an overrun in the Police Department budget of approximately \$20,000. Adjustments would have to be made at the first meeting in November into the police accounts.

Mr. Goldberg brought up the problem of the two members of the Police Department who are out sick, and asked the procedure to bring the officers back into active duty. After discussion, it was made clear that, by ordinance, an officer who is out for three or

more days on sick leave must provide the Borough with a doctor's certificate.

Mr. Goldberg asked about the Borough's rights, as to whether they could place an officer on involuntary sick leave.

Mr. Mutter responded that the Borough code is not clear on this matter.

Mr. Mutter recommended appointment of a police physician as soon as possible and to request an examination of the officers currently out sick by said physician before they return to work.

Mr. Goldberg reported that the police committee was considering, for economic reasons, the possibility of dissolving the position of the chief of police. Mr. Mutter told the council that the position of chief was established by code, and that to abolish the position, they would have to amend the ordinance. They could then appoint a public safety official to administrate the department.

On the matter of the discrepancies between the payroll and other police records, Mr. Goldberg said perhaps an investigation should be conducted by someone outside of the Borough, such as the Ocean County Prosecutor's Office.

Mr. Mutter recommended that the Borough give written notice to Chief Burger that his specific job performance would be discussed, in conformance with the Rice case.

Mr. Mutter said that an internal investigation would be the role of the police committee, which has the legal right to look into operating budgets and the overall performance of the department.

Mr. Ryan suggested that the police committee meet, and bring the individuals in to ask them about the matters in question, and then have the committee draw up its recommendations for the entire council based on its findings.

Mr. Mutter said the police committee has the authority to discuss general matters and make policy recommendations, but can not get into specifics of the chief's job performance, as this is the legal obligation of the governing body as a whole.

Mr. Goldberg said that he would like to see the governing body assert its authority, rather than send the matter back to the police committee.

Mr. Goldberg said that he believes a crime may have been committed. In which case Mr. Mutter responded that the Borough has a duty and an obligation to report it to the Ocean County Prosecutor's Office, but advised that before calling for an outside investigation, the chief be given 48 hours notice and have him come in and explain for himself.

Mayor Siddons expressed concern that the police department's computer records could be altered. Sgt. White said that he made backups of all the records when the problem came to light.

Sgt. White expressed concern over the evidence missing from the police headquarters. Mr. Mutter said that the possibilities were that it was preserved somewhere else for safety purposes, or that a crime was committed.

Sgt. White attempted to explain some of the discrepancies in the

payroll records, and also to explain the system of the police department's computer time clock.

Mr. Mutter suggested the Borough act cautiously, possibly to go to Jim Holzapfel for his input.

Mr. Mutter said he would send the Rice notice to Chief Burger, and the police physician could be appointed at the special meeting.

On further discussion, it was decided not to send the Rice notice out of concern for the chief's health, not to set a definite special meeting date, and instead to hold a meeting between Mayor Siddons, Mr. Goldberg, Sgt. White, Mr. Holzapfel, and Mr. Mutter.

Sgt. White explained the matter of Officer Marini's back injury. He is currently minus 32 hours of sick time, but he still has 86 hours of comp time on the books, and he has been paid through October 23. Marini wishes to file for disability and not use his remaining 86 hours of comp time, and will provide Sgt. White with a letter stating this.

It was agreed to hold a special meeting on Thursday evening, with the stated purpose of holding an executive session to discuss personnel.

Mayor Siddons asked the council to provide him with lists of necessary expenditures in their departments for the rest of the year so as to aid the effort to cover the police budget overrun. He also asked for quotes on the purchase of three time clocks for the Borough employees.

Mayor Siddons notified council that an employee had filed a grievance, and that he had appointed a committee to handle the matter, with Mrs. Bottomley as its head, Mr. Ryan, and Mr. Warfield.

Motion to adjourn at 11:30pm made by Mr. Goldberg, second by Mr. Ryan. Voice vote, all in favor.





CLOSED SESSION

NOVEMBER 05, 1992

For the record, the following were present: Mrs. Bottomley, Ms. Chambers, Mr. Goldberg, Mr. McKelvey, Mr. Ryan, Mr. Warfield, Mayor Siddons, Mr. Mutter, Borough Treasurer, Sgt. White, and Borough Clerk.

Mr. Mutter updated the council on the meeting with Jim Holzapfel, attended by Sgt. White, Mayor Siddons, and Mr. Mutter, with Mr. Goldberg available by telephone. He reminded the council that they may only discuss the general situation within the police department, not specifics regarding the Chief's job performance. At said meeting, the following determinations were made:

1. Regarding the evidence missing from the police station, it was recommended that Sgt. White determine whether there was a reasonable explanation for it, i.e., that it was removed for safekeeping somewhere other than the police station, and if there is none, to proceed with a criminal investigation for tampering with evidence.
2. It was recommended that the Borough ask for a written report from the Chief to the Police Committee as to the issue of the time records, specifically asking the Chief, when he returns to good health, to reconcile his schedule in relationship to what the discrepancies in the time records indicate.
3. On the issue of the Police department budget, it was recommended that the Chief be sent a Rice Notice regarding his job performance, particularly on the matter of his administration of the budget.

The request for a written report has not yet been communicated to the Chief, and the Rice notice has not yet been sent.

On the first matter, Sgt. White reported that an investigation was proceeding by the N.J. State Police and the Ocean County Prosecutor's Office to determine whether a criminal violation had occurred in the matter of the missing evidence.

On the matter of the report on time records, Mr. Mutter said that due to the Chief's health condition, the request for the report can be deferred. Mr. Goldberg reported that the Chief is out of the hospital, but that an arterial blockage had been found in his heart, and he was expected to go to Deborah in a week or two to determine the severity of the condition. He may require surgery, and he does not know when or if he will return.

Mr. Goldberg commented on the sensitivity of this matter, and said that some negative reports and rumors had gotten back to the Chief. He expressed his concern over the confidentiality of the matter in regard to Borough employees. Mayor Siddons informed him that the supervisor of the employee who had made some comments had been notified, and that employee had been reprimanded.

Mr. Mutter mentioned the article about the Chief's health in the

Observer, and said that it was important that the Borough do the right thing in this matter, and keep all information discussed in closed session confidential.

Mr. Mutter advised that the request for a written report from the Chief and the sending of the Rice Notice to the Chief will be postponed until his health stabilizes, so as not to jeopardize the Borough's interests in the possibility of a Worker's Comp case being built against the Borough.

Mayor Siddons explained some of the circumstances surrounding the three conflicting sets of records. Mr. Goldberg asked about the possibility of bringing in an outside investigator to resolve the problem. Sgt. White responded that he believed the Borough would have to do an audit of the records before an outside agency could be called in to investigate.

Mrs. Bottomley expressed the opinion that the Borough has an obligation to ask the chief about the records whether he is sick or not. Mr. Warfield suggested that, when the Borough physician is appointed, his first duty should be to determine the chief's health status.

Mr. Mutter stressed that he and Mr. Holzapfel were of the opinion that the request to the chief for an explanation should be postponed until his health has improved.

Mr. Mutter explained the position of the Police Physician, if the Borough were to appoint one, under the Borough Code 216.12 (a) & (c). The physician shall, when requested by the council, advise the council on medical matters, and conduct a physical examination of any officer. Discussion continued, and Mr. Mutter recommended appointment of a physician tonight, so that he could examine the chief and report to council at the meeting in two weeks, so as to determine whether or not, considering his state of health, the chief could be expected to answer specific questions.

Mayor Siddons brought up the matter of Ptl. Marini's illness. Sgt. White said that he had requested certification from Ptl. Marini's doctor of his absence from active duty, but had not yet received it. Mayor Siddons referred to a letter from Ptl. Marini, asking the Borough to stop paying him for his remaining 86 hours of comp time, because he was applying for disability. Sgt. White asked about the procedure if Ptl. Marini goes on temporary disability, as to what happens with the 15 sick days he should accrue as of January 1, 1993. Mayor Siddons asked about his other benefits, and Mr. Mutter said he would research these questions.

Mr. Goldberg brought up the matter of time clocks for the Borough employees, saying he believed they should be installed in the Police Department, the Borough offices, and the Borough garage. Mayor Siddons said if there was a general consensus on this, that they could go ahead and purchase, because there is money available for this under ordinance. Mr. Mutter recommended that the procedure for use of the time clocks be set down in ordinance, and informed the council that some officials do not have to use the time clocks, specifically the tax assessor. Mr. McKelvey said that

he has a few quotes on time clocks, racks, and cards.

Mr. Warfield brought up the matter of construction administration, specifically the replacement of Mr. Gabriel. He related to council his findings on the construction administrations of other municipalities. Mr. Warfield recommended going with the county for the construction official, hire a part-time zoning official, and try to recruit a volunteer zoning official or secretary. Mr. Mutter said that the county would also not take over the position of code enforcement official, so the Borough would have to hire someone for that position, as well as for zoning officer. Discussion continued, and Mr. Mutter reminded council of the urgency of the matter, because without a zoning official, no construction can be approved. Mr. Warfield said he wanted to get in contact with the applicants and arrange interviews. Mr. Mutter advised that he could either delegate a committee or bring the applicants before council in executive session.

Mayor Siddons asked Mr. Mutter if he had received the new agreement with the county yet, Mr. Mutter said he had requested it, but had not yet received it. Mr. Warfield explained the two options of going to the county, one in which the county would do everything for the fees they collected, the other that the Borough could have its own construction official and they would give a twenty percent rebate back. Mayor Siddons added that the Borough in that case would have to provide an office and clerical help. The council reached a consensus to go with the county, and Mr. Mutter was asked to draw up an ordinance to accept the agreement.

Motion to adjourn closed session made by Ms. Chambers, second by Mr. Ryan, 8:10 p.m. Voice vote, all in favor.



CLOSED SESSION

NOVEMBER 23, 1992

For the record, the following were present: Mayor Siddons, Mrs. Bottomley, Mr. Goldberg, Mr. McKelvey, Mr. Ryan, Mr. Warfield, Mr. Mutter, Sgt. White, and the Borough Clerk.

Mr. Mutter, on the matter of potential litigation, said that they needed a punch list of items outstanding from Mr. Gabriel, and a list of municipal mechanical liens regarding the municipal building.

Mr. Warfield said he met with the county about the responsibilities of the zoning officer. He said there are no specific requirements for the position, and he had narrowed the applicant pool down to 4 people. He wants to bring them before council for an interview at a special meeting on Dec. 1, 1992.

Mr. Goldberg asked about code enforcement, and Mr. Warfield responded that the issue did not seem to arise often enough to be important. Mr. Mutter suggested meeting with the county council to work the arrangement out before the second reading of the ordinance.

On the matter of the police department, Mr. Mutter brought up a personnel matter concerning Chief Robert Burger. For the record, Mr. Mutter explained that all previous discussions on the police department in executive session had been general, and not specifically directed at the Chief's job performance. He indicated that a Rice Notice had been sent to Chief Burger, November 13, 1992, designated for the record as item IH-1, initialled JMM, dated November 23, 1992. The notice was sent by regular and certified mail, the white certified mail receipt designated for the record by Mr. Mutter as IH-2, initialled JMM, dated November 23, 1992. The green card certifying receipt of the certified mail had not yet been returned, and the regular mailing had not been returned. Mr. Mutter said he had received a five paragraph letter from Chief Burger, dated November 16, 1992, received by the Borough November 18, 1992, addressed to the Mayor and Council. Mr. Mutter had designated it IH-3. In Chief Burger's response, he confirms his receipt of the Rice Notice, asks that his specific employment be discussed in private, not in public, and waives his right to be in attendance at this evening's executive session due to health reasons. Mr. Mutter noted that the Chief's letter specifically confirms the fact that he is aware that his personal job performance will be discussed.

Mr. Mutter then asked Sgt. White as Acting Chief to update the Mayor and Council on his investigation of the budget of the Police Department, of some physical evidence concerns of the department, and of the department's time records.

Sgt. White, on the matter of the investigation of the theft of electronic equipment from the fire house on February 27, 1992, said the police department had investigated the larceny of a 27-inch

television and a VCR. Arrests were made of two individuals, and the property was maintained and hooked up in the Chief's office, and used at his convenience. He said on August 12, 1992, the police received a loss pay letter from the insurance company, stating that they had paid the claimant for the loss, and they were interested in the recovery of the property. The Chief called the insurance company and informed them that the property had been recovered but was being held for evidence.

On October 16, 1992, Sgt. White said he was working the night shift, and noticed that the VCR was not where it had been for this entire time period. He said he went to an individual in the N.J. State Police for advice, and this individual documented their conversation, and requested that Sgt. White confirm that the item was not logged back into evidence or placed properly somewhere else. On October 18, 1992, he was informed through another patrolman that the Chief had experienced chest pains. Sgt. White did not ask the Chief about the VCR or the evidence cabinet out of regard for the Chief's health. Sgt. White then contacted Councilman Goldberg regarding the situation regarding the Chief's absence and medical condition. On October 21, 1992, Sgt. White attempted to obtain the key to the evidence cabinet from the officer in charge of it, who is also on medical leave, but could not. On October 22, 1992, Sgt. White was appointed as acting Chief, making him responsible for all contents and operations under the department. He said he again made contact with the State Trooper he had spoken with previously, who put Sgt. White in contact with a detective from the organized crime and corruption unit of the N.J. State Police. This detective advised Sgt. White to inventory the police headquarters, and secure the evidence cabinet. Sgt. White said he obtained the key to the evidence cabinet from Ptl. Marini, and the evidence cabinet was logged as containing 45 items, the VCR was not in the cabinet. Detective Frank Rogers of the State Police instructed Sgt. White that they should meet about the events which with they have been dealing. A meeting was held on October 30, 1992 between the Borough Attorney, Mayor Siddons, Jim Holzappel, and Sgt. White, at which it was recommended that Sgt. White ask the Chief about the VCR. On October 30, 1992, Sgt. White went to the hospital to see the Chief and asked the Chief about the location of the VCR. The Chief advised Sgt. White that Signa Recovery Services had picked it up a couple of weeks ago, and it was released to John Smith, a representative of that company. Sgt. White advised the Chief that he had checked for property reports or release forms and could not find any. The Chief told Sgt. White that a letter of release and a property release form, along with a letter to John Smith from Signa Recovery Services pertaining to the salvage value of \$100.00, were on his desk in police headquarters. On return to headquarters that evening, Sgt. White located the letter about the salvage price. On October 31, 1992, Sgt. White spoke to the Chief on the telephone, in which conversation the Chief inquired into his success in finding the materials. Sgt. White asked the chief again exactly what materials should have been there, and the Chief told him that Signa did not pick the VCR up, but that he had it at home, having purchased it from Signa at a salvage value of \$100.00. Sgt.

White said he then telephoned Detective Rogers and advised him of the situation. Detective Rogers requested a meeting with Sgt. White on November 2, 1992 to retrieve any reports and case files regarding this matter. At this meeting, Sgt. White provided Detective Rogers with the original file regarding the arrest, the theft, and the investigation. Sgt. White kept a copy of the file in his home, secured in his personal safe, and advised the mayor and council as well as Detective Rogers of this action. On November 5, 1992, Sgt. White said while looking for a telephone directory which was used in the Chief's office for business affairs, he noticed that several personal items belonging to the Chief appeared to be missing. Sgt. White then telephoned Chief Burger at home, and asked him if he had been in his office. The Chief said he had, that he needed his telephone book and his electronic rolodex, and some other belongings. Sgt. White deemed the Chief's actions as suspicious, and he elaborated upon the causes of his suspicions. On November 7, 1992, after meeting with the Mayor and Councilman Goldberg, he arranged with Toms River Locksmiths to install two deadbolt locks, one on his office door, the other between his office and the chief's office. Locks were also installed on the cabinet, and on the computers. On November 8, 1992, Sgt. White was installing a Norton Anti-Virus program on the police computers, and discovered that a program which had been installed by the Chief previously had been removed. Upon entering his office, Sgt. White found two pieces of correspondence slipped under the door, one from Ptl. Marini's doctor, the other from Chief Burger, requesting that he be provided with keys to the new locks on the office doors. On November 9, 1992, Sgt. White contacted Det. Rogers, who advised him that he would be setting up a meeting with the O.C. Prosecutor's Office. On November 12, 1992, a letter was received from Recovery Services, which Sgt. White opened, and found a second request for the \$100.00 payment for the salvage value of the VCR. On November 18, 1992 Sgt. White discovered that the office locks were not locked, that the Chief had left him a handwritten note, and that most of the Chief's possessions had been removed. Sgt. White said that he was to meet with the assistant Ocean County prosecutor on November 24, 1992.

Sgt. White then informed the council that he had received that morning, by regular mail, a box addressed to the Island Heights P.D., which he opened as the acting chief and therefore custodian of all regular mail addressed to the police department. The box contained a two page invoice from Gall's Inc. of Lexington, KY, for one (1) style 1B 1282 badge case and a 166 badge with 33 letters. The black leather case and the badge, which reads "Chief's Brother", were also in the box. The purchase order number was 5887, and the requisition was for \$83.74. The purchase order does not specify that the badge was purchased out of the Chief's clothing allowance. Discussion ensued on this matter.

Mr. Goldberg said that Jack Robinson of the police committee had contacted Signa. Sgt. White said that Mr. Robinson told him that

he had been in contact with Signa, which is cooperating and sending the entire package to him. Mr. Robinson also informed Sgt. White that Chief Burger, while out on sick leave, had attempted to contact Signa Recovery Services to get his letter back, but Signa would not return the letter to him, as they had received neither the Chief's check nor the VCR.

Mr. Warfield asked about the previous decision to have the Borough Physician examine either the Chief himself or his medical records in order to determine his state of health before proceeding with the sending of the Rice notice and the discussion of the chief. Mayor Siddons explained that since the chief had proved himself well enough to go to police headquarters more than once during his sick leave, it was decided to send the Rice notice immediately.

Mayor Siddons asked if was necessary to go into detail at this time in a discussion of the Chief's handling of the budget. Mr. Mutter said that on that issue he believed John Adams should be available, as that regarded the Chief's inability to handle the financial affairs of the department and he would like a report on the budgets from the treasurer.

Mr. Goldberg asked Sgt. White about the police department's normal procedure for documenting the workday. Sgt. White responded that he had set up a program on the computer which essentially worked like a time clock.

Questions were raised concerning the shifts to which the Chief was assigned and the actual time worked. Sgt. White said he believed there were incidents of the Chief working only a few hours of his assigned shift. Mr. Goldberg asked Sgt. White approximately how many incident cards an officer would normally have in one day, and how many the Chief had for the entire year. Sgt. White responded that he personally would average between 15 and 20 cards per day, while the Chief had less than 35 for the year.

Mr. Goldberg asked Sgt. White what he thought was the source of the overrun in the police budget. Sgt. White said he believed part of the problem was the switch to the 12-hour time shift, which did not allow for much flexibility in scheduling, resulting in the call-in of more part time officers than usual.

Other various aspects of the Chief's job performance were discussed, including his outside employment, his taking of his badge and duty weapon from police headquarters, his negligence in filing a form which may have resulted in suspension of state aid, and his reluctance to have both the breathalyzer and the radar repaired.

Mr. Mutter said that he had discussed the situation with Jim Holzapfel to determine the next step for the Borough to take. He said it is very important that all this information remain contained in executive session. He and Mr. Holzapfel recommended that the Borough designate several municipal officials to specifically go to the Chief and his Counsel to present the matter



to him in a continued confidential manner, to see what his intention is. Mr. Mutter noted that the Prosecutor's office wanted to meet with Sgt. White, and recommended that confidentiality be maintained while designating a couple people to meet with the Prosecutor's Office and to deal with the Chief and his attorney. He referred to the Borough of South Toms River, which had had problems with its Chief, and they had effected a clean and swift change in command.

Mrs. Bottomley asked about the Borough council's obligations as concerning the removal of Chief Burger and appointment of his replacement. Mr. Mutter responded that the criminal investigation is the obligation of the Prosecutor's Office. Mr. Goldberg asked why it was necessary to go to the Chief himself, why they could not take the matter directly to the Prosecutor. Mr. Mutter replied that he and Mr. Holzapfel had recommended going directly to the Chief before the new matter of the badge which the Chief ordered came to light.

Sgt. White said after his meeting with the Prosecutor tomorrow, they would better know whether to address the Chief directly or not.

Mr. Mutter warned that the chief may agree to resign but with certain conditions, such as being able to buy out his pension, or to keep his sick time. Mrs. Bottomley said she did not think they should make concessions to the chief when he has wronged the Borough. Mr. Ryan said that they might not want to rule out negotiations when the cost of going to court is considered.

The Mayor and Council reached a consensus to act according to the recommendation of the Prosecutor's Office.

Motion to adjourn closed session at 11:15 p.m. made by Mr. Goldberg, second by Mrs. Bottomley. Voice vote, all in favor.

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Respectfully submitted, E. Rogalski, RMC



CLOSED SESSION

DECEMBER 01, 1992

Closed session convened at 6:40 p.m.

For the record, the following were present: Mayor Siddons, Mrs. Bottomley, Ms. Chambers, Mr. Goldberg, Mr. McKelvey, Mr. Ryan, Mr. Warfield, Borough Attorney Mutter, and the Borough Clerk.

Mr. Warfield said he had received 17 applications for the position of zoning officer. He interviewed 7 of those applicants and there were 3 people remaining who were actively interested in the position. One of the applicants, Mark Redman, had a prior commitment and could not be present that evening. Mr. Warfield expressed some concern over a conflict of interest, because Mr. Redman works for his father, a contractor, who often has jobs in Island Heights. He said that Mr. Redman has no experience in zoning, although he does have the licenses for code enforcement.

Mr. Warfield told of another applicant, Walter Sturko from Seaside Park. Mr. Sturko is 72 years old, and retired. He was Lacey Twp. construction official and sub-code officer full time from 1986 to 1991. He was South Seaside Park's construction official and building subcode from 9/78- 3/80, and 3/82-2/83 part-time.

The third applicant, Ed Robinson, is also in construction, has the licenses but no practical experience.

Mr. Warfield said he was not sure at the moment how much time the position would occupy, and he wants to sit down with the person who is hired and the County construction office to determine the details of the position. He tentatively saw the position as taking about 6 hours per week, either one day or two half days, at \$10.00 per hour, for a yearly salary of \$3000.00. He said that it may not be possible to hold to that because they still had to decide what to do about the issue of code enforcement, whether to incorporate that position with the zoning officer, or to let the police handle it, or to possibly find a volunteer. Mr. Mutter said in the case of a volunteer, they should check with OCJIF about coverage first.

Mr. Warfield said that if they hire Mr. Sturko, to keep in mind that he had requested to be paid as a consultant, not to be on the payroll.

Mrs. Bottomley asked if they had a position description of the job. Mr. Warfield said they had one from Dover, but it was vague, and they would have to come up with one of their own.

Mr. Mutter said the County wanted to meet with the Borough's representatives on Friday to discuss the contract. Discussion ensued on the contract with the County and the possibility of negotiations.

Mr. Warfield brought in Mr. Sturko for interview. Mr. Sturko gave a brief account of his job experience in various municipalities. He informed council that because he was retired and the nature of

his pension, he would have to be hired on a per diem basis or as a professional consultant. Mrs. Bottomley asked Mr. Sturko about the position and the time requirement he foresaw for it. Mr. Ryan asked Mr. Sturko about paperwork. Mr. Sturko responded that there would be some paperwork, which would normally be handled by a control officer or a secretary.

Ms. Chambers asked about the role of the code enforcement officer. Mr. Sturko explained some aspects of the position.

Mr. Warfield then brought in Ed Robinson for interview. Mr. Robinson explained that although he did not have experience in zoning, he had several acquaintances who were currently involved in it upon whom he could rely for guidance. He gave a description of his job experience and his certifications. When asked about his availability, Mr. Robinson said his hours were flexible, and Monday evenings would not be a problem.

Mr. Goldberg asked for Mr. Warfield's recommendation for the position. Mr. Warfield said he personally leaned toward Mr. Sturko based on his prior experience.

The position of the code enforcement official was discussed in an attempt to clarify the position itself. Mr. Mutter suggested that the practical answer would be to leave most of the enforcement duties to the police department. Mrs. Bottomley said that even if they hire a code enforcement officer, she sees it basically as only a name, not something that would take a great deal of work.

On the matter of secretarial work for the zoning officer, Mayor Siddons said a new planning board secretary would be hired soon, and perhaps that could be worked in to the job description for that position.

After discussion of their opinions, Mayor and Council reached a consensus favoring Mr. Sturko.

Mr. Mutter recommended that this action should be memorialized in a formal resolution at the next meeting.

Motion to adjourn closed session made by Mr. Goldberg, second by Mr. Ryan. Voice vote, all in favor.

Closed session will reconvene at the end of the public portion of the meeting.

Closed Session reconvened at 8:00 p.m.

For the record the following were present: Mayor Siddons, Mrs. Bottomley, Ms. Chambers, Mr. Goldberg, Mr. McKelvey, Mr. Warfield, Mr. Mutter, Sgt. White, and the Borough Clerk.

Mr. Mutter stressed that Chief Burger had not been notified of that evenings executive session, and therefore they must not specifically discuss the Chief's job performance. Mr. Mutter said that another Rice notice would have to be sent to Chief Burger notifying him that he would be discussed at the next meeting. Mayor Siddons asked that Mr. Mutter send the notice for the meeting

on December 09, 1992.

Mr. Mutter reminded the Mayor and council of their previous decision to hold off on any action until the O.C. Prosecutor's office made its recommendations. Mr. Goldberg expressed concern that the process was moving too slowly. Mr. Mutter referred to the previous advice given by himself and Mr. Holzapfel warning against haste in making charges as that would bring the problem to the front page of the newspapers, possibly complicating the situation further.

Sgt. White said he had attended a meeting that afternoon with the Prosecutor's Office, and had been informed that the investigation was still pending.

Mr. Ryan asked about the general procedure for the Mayor and Council to take action to remove an employee. Mr. Mutter responded that there were specific procedures of formal charges to be filed, especially in the case of the police department.

Mr. Goldberg expressed concern over Chief Burger still being head of the department. Mr. Mutter said that he was legally no longer the head of the department as he was on a leave of absence. Mayor Siddons requested a letter be sent to the individuals on sick leave, saying that due to insurance matters, they would not be permitted within the premises until they receive complete clearance from the Borough Physician.

Mr. Mutter said, for the record, the Chief had written a letter to Sgt. White received November 28, 1992, but it was too specific concerning the Chief's and Sgt. White's job performances to be discussed before the sending of the Rice Notice.

Mayor Siddons then brought up the issue of the position of Public Safety Director, referring to the Ordinance 92-12. He asked that Mr. Mutter review it and see if any changes were necessary, and it could possibly be considered for introduction at the next meeting. Mr. Mutter said two drawbacks to the position are that the Public Safety Director can not patrol, and cannot issue tickets or gun permits.

Mr. Goldberg asked about the timing on the ordinance, particularly his concern that although the Public Safety Director position could be created for economic reasons, they had already sent the Chief a Rice Notice, and the issues be obscured. Mr. Mutter said that in general, if the position of the Chief were abolished, and Chief Burger's health were to improve so that he returned to the job, his position would then be Sergeant.

Mayor Siddons asked about procedures for bringing charges against another patrolman, and asked Mr. Mutter to confer with the Acting Chief on that matter.

Mr. Goldberg expressed his disappointment with the Prosecutor's

Office in their handling of the case, particularly their lack of enthusiasm in the investigation of the issue. Mr. Ryan gave the option of signing a criminal complaint against the Chief. Mr. Goldberg asked about the possibility of the council filing a formal complaint, and Mr. Mutter advised against it. No action is to be taken on this matter.

Mr. Warfield asked about the matter of the grievance which had previously been discussed. Mrs. Bottomley said she had met with Sammy, and asked him to get back to him after their conversation with his feelings, but she had not heard from him whether or not he definitely wanted to pursue the matter.

Ms. Chambers and Mr. McKelvey both said they had spoken to Sammy, and believed that Mrs. Bottomley should speak with him again.

Motion to adjourn closed session at 9:00 p.m. made by Mrs. Bottomley, second by Mr. Ryan. Voice Vote, all in favor.

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Respectfully submitted, E. Rogalski, RMC

CLOSED SESSION

DECEMBER 09, 1992

Closed session convened at 8:45 p.m. For the record, the following were present: Mayor Siddons, Ms. Chambers, Mr. Goldberg, Mr. McKelvey, Mr. Ryan, Mr. Warfield, Mr. Mutter, Sgt. White, and the Borough Clerk.

Mr. Mutter said no Rice Notice had been sent to Chief Burger, and so the Chief specifically could not be discussed in this session. Mr. Mutter recommended sending the Rice Notice for the next meeting, to which the council agreed.

Mr. Goldberg said the police committee had met, and recommended that the council adopt the ordinance creating the position of Public Safety Director. Mr. Goldberg said the members present were himself, Fred Grigg, Mr. McKelvey, Mayor Siddons, Joe Tavares, Joe Dean, and Jack Robinson and that he had impressed upon them the need for confidentiality.

Mr. Mutter said the statute for disciplinary purposes says the matter is up to the appointing authority, which in this case is the governing body, not the police committee.

Mr. Goldberg said the committee had recommended not taking action while the Prosecutor's Office was still working on the investigation.

Mr. Mutter asked that the discussion remain in general terms, and informed council that as of today, the investigation is not complete.

Mr. Goldberg asked about the procedure, if a Rice Notice is sent, whether or not that hearing could result in a formal complaint being registered. Mr. Mutter referred to a memorandum he had sent to the governing body, about state law 40A: 14-147, indicating specific procedure for discipline of a member of the law enforcement community.

Mr. Mutter outlined some of the options for Chief Burger if the Public Safety Director position were created, depending upon whether the Chief remains on the force or not.

Mr. Mutter said that if charges are being pursued, the Borough will have to be the finder of fact, and will have to obtain the services of an outside attorney to prefer the charges against the Chief.

Mr. Mutter referred to a letter which he had sent to the Chief and Ptl. Marini, and copied council on. Mayor Siddons said he spoke to Dr. Vivona, who asked that the Chief and Ptl. Marini be requested to see the Borough Physician. Dr. Vivona informed Mayor Siddons that he had been unable to get in touch with the doctor attending both officers. Mayor Siddons asked Mr. Mutter to forward a letter to Chief Burger and Ptl. Marini, requesting that they see Dr. Vivona.

Mr. Mutter called attention to a memo that the State Division of Taxation has sued the Borough for a clerical mistake on the assessed valuation of Borough property, in which the ratio was incorrect, affecting state aid for the school. Mr. Mutter said he wanted agreement from the assessor before he filed an answer for the Borough.

Mayor Siddons asked Mr. Mutter to impress upon the Prosecutor that the Borough wanted a speedy resolution of the matter. Mr. Goldberg expressed his disappointment in the Prosecutor's lack of enthusiasm for the case.

Mr. Mutter stressed the need for confidentiality on this matter. He said he knew Mr. Goldberg was in a difficult spot with the Police Committee, but Mr. Goldberg assured him that the committee understood the need for confidentiality. The function of the police committee was discussed, and it was stressed that the committee could only make recommendations, and only the governing body could take action.

Mr. McKelvey said he had met with Matt Leahey, and they had seen that the contracts are not in form, and the insurance was improper. Mr. Leahey was checking into the bonding. Mr. McKelvey said he was still having a problem with the contract, particularly that the contractor repeatedly gave copies of a page of the contract which should have been corrected, but every copy was exactly the same. Mayor Siddons said he wanted the final copy of the contract initialled by the contractor and by the Borough Clerk.

Mr. Warfield expressed dissatisfaction with Mr. Hoppe as the architect. Mr. McKelvey said the confusion is not the fault of Mr. Hoppe, but actually the fault of the contractor. Discussion continued on the problems with the contractor.

Motion to adjourn closed session made by Ms. Chambers, second by Mr. Goldberg. Voice vote, all in favor.

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Respectfully submitted, E. Rogalski, RMC



Closed Session convened at 8:50 p.m. For the record, the following were present: Mayor Siddons, Mrs. Bottomley, Ms. Chambers, Mr. Goldberg, Mr. McKelvey, Mr. Ryan, Mr. Warfield, Mr. Mutter, Sgt. White , and the Borough Clerk.

Mr. Warfield said that Mr. Sturko has decided not to accept the position as Zoning Officer/Code Enforcement Officer, as it would effect his pension. Mr. Warfield recommends that the borough hire Mark Redman to fill this position, who was introduced to the council. Mrs. Chambers asked that he review his resume.

Mr. Mutter asked if Mr. Redman did any work in the borough. Mr. Redman responded that he did, Mr. Mutter asked if any required zoning approval and how many times this occurred. Mr. Mutter asked if the intention was that he continue to do contracting work in the borough. Mr. Mutter asked what the state tells you to do if there is a direct financial conflict of interest. Mr. Redman noted they would say to get out of zoning. Mr. Goldberg asked how would he continue business in town. Mr. Redman said if he could find another individual to sign off on the prints it would be okay.

Mr. Mutter asked if Mr. Redman would be willing to serve for a period of one year commencing Jan 01, the maximum amount of \$3,000.00, required to work 6 hours per week, and to work on Monday evenings.

Mr. Warfield said that a meeting will take place with the County Officials, Mr. Gabriel, Mr. Redman and Ms. Chambers, to review the transition.

The meeting was then turned over to Mr. Mutter at 9:00 p.m. for discussion on Chief Burger's status. Mr. Mutter asked if the clerk had proof of service, the green card had not been returned. Mr. Mutter entered into evidence the following: 1. Letter to Chief, indicating 8:30 p.m., discussion would be held, sent regular mail and certified r/r mail. The regular mail letter was not returned, certified was sent green car not received, white card is in possession of the clerk. Mr. Mutter said he has not received any communication from Chief Burger or any representative on his behalf. Mayor Siddons indicated the same.

The Clerk noted a phone call was received prior to the Rice Notice being sent, that a doctor's appointment was schedule for January 04. Mr. Mutter said prior correspondence was sent per the council's determination to consult the borough's physician.

Mr. Mutter said for the record he spoke with Patrolman Marini today, he has an appointment 12/23/92.

Mr. Mutter asked if any members of council have received notice from the Chief or his representative that he received notice of

this hearing. The same was asked of Sgt. White. Mr. Mutter asked if the letter was sent to the same address, the clerk verified that it was sent to his home address.

Mr. Goldberg asked if the transcripts from closed sessions are ever released. Mr. Mutter the rules on release of executive session materials regardless of the topic is they are to be released when the need for confidentiality is no longer exists.

Mr. Mutter for the record marked the following with his initials and date: (1) IHI-Clerks Certified and Regular letter to Chief at his last known address, advising him of tonights hearing at 8:30 p.m. (2) IH2-Draft of letter prepared by Mr. Mutter and cover letter to the Clerk requesting that it be sent the notice to the Chief that it be sent both Regular and Certified Mail and the white form from Post Office indicating that it was sent certified. Also the indication from the Clerk that it was sent Certified and sent Regular Mail and it has not been returned.

Mr. Mutter asked that we get an update from Sgt. White. He had attempted to contact the OC Prosecutor's Office, being told the individuals were not in the office today. Sgt. White did contact the NJSP Officer he had been dealing with and was advised that the investigation is still on going.

Sgt. White said a new development occurred on Dec. 14th, during an investigation of the theft of a motor vehicle from a residence in Dover Twsp. Two weapons were in the vehicle, the cross check on one of the weapons indicated that the permit was issued from Island Heights. Upon checking the file, it was determine that it may have been issued improperly. The individual was a close associate of Robert Burger and used a post office box as an application address for the permit, and never resided in the borough. Sgt. White said permits pursuant to law, may only be issued to a resident of the borough. This information was passed on to the prosecutor's office.

Mr. Goldberg asked for the record, "does the Chief of Police has the authorization to issue gun permits for people who reside within the borough", Sgt. White responded "pursuant to Chapter 58." Mr. Goldberg asked if this were a crime, Mr. Mutter said he thought it was mis-conduct in office.

Mr. Goldberg asked how is this hearing different, Mr. Mutter said this is a specific item regarding his job performance, every time he is to be discussed a Rice Notice must be sent.

Mr. Goldberg said prior discussion surround the disappearance of the VCR from evidence, Sgt. White said the case is still pending. Mr. Goldberg said that he attempted to buy or bought evidence from a case still pending in Ocean County. Sgt. White reviewed the SOP's for evidence within the department. Ptl. Marini was in charge of the evidence locker prior to Sgt. White being named Acting Chief. Mr. Goldberg asked if this is a crime, Mr. Mutter

said mis-conduct.

Sgt. White said the badge had been turned over to the prosecutor's office along with all the pertaining paper work. Mr. Mutter asked if Sgt. White indicated to the Prosecutor's Office the urgency of this situation.

Mr. Ryan said there is sufficient cause to terminate him as an employee of the borough. And the position of Chief should not be killed. MR. Goldberg agreed, and he would like to see criminal charges filed against him. Mr. Goldberg asked if the governing body could authorize that criminal charges be filed against him regardless of what the prosecutor's office does. Mr. Mutter said you could file a complaint but it would be sent to the prosecutor's office for review. Mr. Warfield agreed.

Mr. Mutter said this is not a cause hearing, this is a rice hearing where you are allowed to discuss his job performance. A cause hearing is where you receive written charges, and you have a prosecutor. Mr. Mutter said the authority could be given to the Chief Law Enforcement Authority to make a determination if criminal charges should be filed. Mayor Siddons said he would file the charges. Sgt. White said he would like to meet with the Prosecutor's Office and inform them that as a result of this meeting the governing body is requesting that criminal charges be filed on the basis of the facts presented to date.

Mr. Goldberg said why didn't we schedule a hearing prior, we had all this information. Sgt. White notice council of an allegation whereas there may have been a falsification of a document that would come from the State of New Jersey. If this proves to be in the possession of a certain individual, it is a fraud, and it's alleged that this document was generated by Bob Burger.

Mr. Mutter said there is a special statue saying when you want to demote, terminate, suspend or remove by reduce in rank, any member of the police department has to be done by hearing.

Mr. Goldberg said this is not mis-conduct, it's theft. Mayor Siddons said we can go the 10 day notice and have it heard. Mr. Goldberg said he wanted criminal charges filed.

Mr. Mutter suggested that the governing body hold a Special Meeting, to have a Prosecutor's Office representative come and tell us what is going on.

Mr. Ryan asked Mr. Mutter if we could still hold a hearing for cause with Robert Burger and his attorney, if we feel that the situation has not changed we can terminate him, and then still pursue the criminal charges.

Mr. Mutter said the governing body can authorize him to obtain the services of an attorney, to file a cause hearing under the statute, he advised that the Public Safety Officer Ordinance be tabled.

Mayor Siddons said we have a decision to make, to go with the cause hearing which will extend the time, or do we go with the Public Safety Director. Mr. Mutter said the Borough Physician should report his findings of the examine on the 4th directly to the council. Mayor Siddons asked the time frame for the cause hearing, Mr. Mutter said he has due process.

Mr. Mutter suggested that the complaint be filed by January 01, 1993, advising him of a hearing date of January 11, 1993. He asked for the authority to obtain the services of an attorney who has background in disciplinary proceedings. Mr. Mutter said on the 11th you can vote to remove him from office. It was also advised that mis-conducted is a matter of public record.

Mr. Goldberg said that the Prosecutor's Office is not doing their job, and should be investigated. Mrs. Bottomley said she would like to be noisy about this and the public be aware of what's going on.

Mr. Mutter said the following actions will take place in open session.

1. Table the ordinance for Public Safety Director, and cancel meeting scheduled for Dec. 30th.

2. To give authorization to Mr. Mutter to hire an attorney, to file a civil complaint for suspension, removal, fine or reduction in rank.

3. To authorize the Acting Chief to make a probable cause determination as the Chief Law Enforcement Official of the Borough as to whether he should file in Municipal criminal charges.

Motion to adjourn closed session made by Mr. Ryan second by Mr. Goldberg at 10:15 p.m., voice vote all in favor.

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Respectfully submitted, E. Rogalski, RMC