

**MINUTES OF THE REGULAR MEETING OF THE MAYOR AND COMMITTEE OF
THE TOWNSHIP OF WANTAGE, HELD AT THE WANTAGE TOWNSHIP
MUNICIPAL BUILDING, 888 STATE HIGHWAY 23, WANTAGE, N.J.
ON THE DATE OF SEPTEMBER 23, 2010**

Mayor Clara Nuss called the regular meeting of the Mayor and Committee of the Township of Wantage to order, and requested the Clerk to call the roll. Upon roll call, the following members of the governing body were present: Mayor Nuss, Committee members DeBoer and Gaechter. The following member was absent: None
Also present Township Attorney, Michael Garofalo

Mayor Nuss stated, "This meeting is being held in compliance with the provisions of the Open Public Meetings Act, Public Laws 1975, Chapter 231. It has been properly noticed and posted to the public, and certified by the Clerk."

Mayor Nuss lead the assembly in the Salute to the Flag.

CONSENT AGENDA

Mayor Nuss requested that the members of the Committee Review the Consent Agenda.

Mr. Doherty informed that the Board of Health has a last minute addition for the consent agenda, requesting that Paul Ranzan of Elkhorn Trail be appointed to the Board of Health to fill an unexpired term running through 12/31/2012. The members of the governing body agreed, by consensus, to add this to the consent agenda for consideration of approval.

There being no one else wishing to comment on the proposed Consent Agenda, Mayor Nuss requested approval of the Consent Agenda.

Mr. DeBoer moved to approve Raffle License RL11-01, to American Legion Post 213, for Off Premise 50/50 Raffle to be held on January 19, 2011.

Mr. Gaechter seconded the motion. Upon roll call,

Ayes: DeBoer, Nuss, Gaechter **Nays:** None **Absent:** None **Abstain:** None

Mr. DeBoer moved to authorize renewal of liquor license 1924-33-003-006 for Tara Inn LLC via Charles Foreman, Trustee in Bankruptcy, in accordance with the special ruling received from the Director of the NJ Division of Alcoholic Beverage Control.

Mr. Gaechter seconded the motion. Upon roll call,

Ayes: DeBoer, Nuss, Gaechter **Nays:** None **Absent:** None **Abstain:** None

Mr. DeBoer moved to authorize Maggie Kolicko to submit a grant application on behalf of the Wantage Township Board of Recreation Commissioners, to the Sussex County Arts & Heritage council, for a grant not to exceed \$1,000 to purchase and install solar lighting at the site of the Veterans Memorial at Woodbourne Veterans Memorial Park.

Mr. Gaechter seconded the motion. Upon roll call,

Ayes: DeBoer, Nuss, Gaechter **Nays:** None **Absent:** None **Abstain:** None

Mr. DeBoer moved to confirm the hiring of Michael Flood, Darrell Caton, James Wagner, Michael Wesloski, James Yurchak, Jesse Fredericks and Jeffrey Krone, as 2010 part time seasonal DPW laborers at a rate of \$18 per hour, to be used solely for snow plowing duties during winter months if regular employees of the DPW are not available for snow plow duty.

Mr. Gaechter seconded the motion. Upon roll call,

Ayes: DeBoer, Nuss, Gaechter **Nays:** None **Absent:** None **Abstain:** None

Mr. DeBoer moved to appoint Peter Lindsay to the Wantage Township Board of Health, for a term running through 12/31/2010 (completing the unexpired term vacated by Gloria Li Trenta), as per the recommendation made by the Wantage Township Board of Health.

Mr. Gaechter seconded the motion. Upon roll call,

Ayes: DeBoer, Nuss, Gaechter **Nays:** None **Absent:** None **Abstain:** None

PAGETWO OF THE MINUTES OF SEPTEMBER 23, 2010

Mr. DeBoer moved to appoint Paul Ranzan to the Wantage Township Board of Health, for a term running through 12/31/2012 (completing the unexpired term vacated by Susan Floyd), as per the recommendation made by the Wantage Township Board of Health.

Mr. Gaechter seconded the motion. Upon roll call,

Ayes: DeBoer, Nuss, Gaechter **Nays:** None **Absent:** None **Abstain:** None

Mr. DeBoer moved to confirm compliance with the requirements of NJ State Statute with respect to the Annual Report of Audit for calendar year 2009, as per the following resolution:

WHEREAS, N.J.S.A. 40A:5-4 requires the governing body of every local unit to have made an annual audit of its books, accounts and financial transactions, and

WHEREAS, The Annual Report of Audit for the year 2009 has been filed by a Registered Municipal Accountant with the Municipal Clerk as per the requirements of N.J.S.A. 40A:5-6, and a copy has been received by each member of the governing body, and

WHEREAS, the Local Finance Board of the State of New Jersey is authorized to prescribe reports pertaining to local fiscal affairs, as per R.S. 52:27BB-34, and

WHEREAS, The Local Finance Board has promulgated a regulation requiring that the governing body of each municipality shall by resolution certify to the Local Finance Board of the State of New Jersey that all members of the governing body have reviewed, as a minimum, the sections of the annual audit entitled "General Comments, Recommendations", and,

WHEREAS, the members of the governing body have personally reviewed as a minimum the Annual Report of Audit, and specifically the sections of the Annual Audit entitled "General Comments, Recommendations" as evidenced by the group affidavit form of the governing body, and

WHEREAS, Such resolution of certification shall be adopted by the Governing Body no later than forty-five days after the receipt of the annual audit, as per the regulations of the Local Finance Board, and

WHEREAS, All members of the governing body have received and have familiarized themselves with, at least, the minimum requirements of the Local Finance Board of the State of New Jersey, as stated aforesaid and have subscribed to the affidavit, as provided by the Local Finance Board, and

WHEREAS, Failure to comply with the promulgations of the Local Finance Board of the State of New Jersey may subject the members of the local governing body to the penalty provisions of R.S. 52:27BB-52 to wit:

R.S. 52:27BB-52, "A local officer or member of a local governing body who, after a date fixed for compliance fails or refuses to obey an order of the director (Director of Local Government Services), under the provisions of this Article shall be guilty of a misdemeanor and, upon conviction, may be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than one year, or both, in addition shall forfeit his office".

NOW, THEREFORE, BE IT RESOLVED that the Township Committee of the Township of Wantage, hereby states that it has complied with the promulgation of Local Finance Board of the State of New Jersey dated July 30, 1968 and does hereby submit a certified copy of this resolution and the required affidavit to said Board to show evidence of said compliance.

Mr. Gaechter seconded the motion. Upon roll call,

Ayes: DeBoer, Nuss, Gaechter **Nays:** None **Absent:** None **Abstain:** None

ADMINISTRATOR'S REPORT: None

ATTORNEY REPORT: None

COMMITTEE REPORTS: None

OLD BUSINESS:

Proposed Settlement of "Friends of Lake Neepaulin, Inc. vs. Township of Wantage"

At this time, Mayor Nuss gave the floor to Mr. Doherty, who offered, on behalf of the governing body, a prepared explanatory statement providing details of the proposed settlement in the lawsuit concerning the repair of the Lake Neepaulin Dam, as well as a position statement of the governing body regarding several of the often-heard suggestions and comments of the public regarding this issue.

The details of that prepared explanatory statement and position statement are as follows:

PAGE THREE OF THE MINUTES OF SEPTEMBER 23, 2010

Prepared explanatory statement and position statement on the Lake Neepaulin Dam Settlement:

On September 23, 2010, the Mayor and Committee of the Township of Wantage shall vote on a proposed settlement in Friends of Lake Neepaulin, Inc. vs. Township of Wantage. The proposed settlement contains the following details:

Wantage Township shall co-sign loan documents issued by the New Jersey Department of Environmental Protection under the "Dam, Lake and Stream Project Fund" on behalf of Friends of Lake Neepaulin (FOLN), for the purpose of repairing the Lake Neepaulin Dam.

The cost of repayment of the principal and interest of the loan funds shall be by local improvement tax assessment implemented by ordinance of the Township of Wantage upon certification of the Wantage Township Chief Financial Officer of the total loan funds expended by FOLN.

At that point in time, the loan repayment shall be made as follows:

FOLN shall be solely responsible for repayment of funds totaling ten percent (10%) of the certified loan funds.

The balance of the loan repayment shall be by local improvement assessment levied on properties designated by the Wantage Township Tax Assessor.

The Tax Assessor shall devise three tiers of properties within the Lake Neepaulin community recognized for the purpose of this Consent Judgment as

- (i) lakefront properties,
- (ii) middle tier properties, and
- (iii) outer tier properties.

The share of each tier for repayment of the loan balance shall be respectively forty five percent (45%), thirty five percent (35%) and twenty percent (20%).

The properties owned by FOLN within the lakefront tier shall be assessed and the assessment shall be a repayment obligation of FOLN in addition to the amount specified above.

Upon certification of the total loan cost, FOLN shall deposit in escrow with the Township of Wantage an amount equal to the FOLN Repayment Obligation. Each year thereafter during the term of the loan repayment, FOLN shall deposit with the Township of Wantage an additional sum equal to the FOLN Repayment Obligation. The purpose of the funds held by Wantage Township shall be for loan repayment in the event of default by FOLN.

If FOLN defaults on the loan repayment, FOLN shall deed Lake Neepaulin and the Lake Neepaulin Beach to the Township of Wantage for one dollar (\$1.00). "Default" shall be defined as depletion of the escrow fund balance to be held by Wantage Township and/or failure to pay the assessment on FOLN owned properties in accordance with law.

FOLN shall be solely obligated to repay any loan costs that may occur in excess of one million dollars (\$1,000,000.00).

There is no way to know the exact cost of Dam Repair at this time. The cost is subject to many factors. It is highly likely that several years will go by before the dam is repaired, the total costs tallied, and the actual special assessment is certified. Preliminary engineering reports have estimated the expected cost to be in the range of \$750,000 - \$1 million. For the sake of presenting the high end of estimates, scenarios have been presented over the past several years utilizing the cost figure of \$1 million. However, this is not an established cost, it is just a scenario

For purposes of settlement, it is established that there are 56 Lake front properties which will receive a special assessment burden of repaying 45% of the loan costs, after the initial 10% FOLN obligation of total loan costs has been accounted for. **Strictly as a scenario**, if the total loan costs wind up involving a \$1 million loan at 2% interest over 20 years, then these 56 Lake front property owners would be required to pay \$437.54 per year, each, as their special assessment. **This is not an actual cost burden. It is one possible scenario on the upper end of possible cost burden.**

The definition of "Middle Tier" for the purpose of this special assessment has not been established as a part of the settlement, but is rather reserved as a discretionary judgment call of the Tax Assessor. The tier may be set if a defensible concept of "lake view properties" can be established by visual inspection, and/or by sales data over the next several years. The actual number of properties in this tier has not been established at this time, since between now and the time that the dam has been repaired, any number of lots may become merged, subdivided, or otherwise altered, and sales data over the next several years may affect the Assessor's final determination regarding which properties shall be included in a particular tier. **Strictly as a scenario**, if the total loan costs wind up involving a \$1 million loan at 2% interest over 20 years, and if the number of property lots in this tier wind up being 225, then Middle Tier property owners would be required to pay \$84.70 per year, each, as their special assessment. **This is not an actual cost burden. It is one possible scenario on the upper end of possible cost burden.**

PAGE FOUR OF THE MINUTES OF SEPTEMBER 23, 2010

Prepared explanatory statement / position statement on the Lake Neepaulin Dam Settlement, Continued

The definition of “outer tier” for the purposes of this special assessment shall be those properties which are not included within the “Middle Tier” or “Lake Front” tier. The actual number of properties in this tier has not been established at this time, since between now and the time that the dam has been repaired, any number of lots may become merged, subdivided, or otherwise altered, and sales data over the next several years may affect the Assessor’s final determination regarding which properties shall be included in a particular tier. **Strictly as a scenario**, if the total loan costs wind up involving a \$1 million loan at 2% interest over 20 years, and if the number of property lots in this tier wind up being 436, then Outer Tier property owners would be required to pay \$24.98 per year, each, as their special assessment. **This is not an actual cost burden. It is one possible scenario on the upper end of possible cost burden.**

FOR THOSE OF YOU WHO THINK THE ENTIRE TOWNSHIP SHOULD PAY FOR THE COST OF THE DAM REPAIR: The Mayor and Committee of the Township of Wantage are not opposed to such a possibility, **provided that a majority of the residents of Wantage Township desire to own Lake Neepaulin.** Currently, there is no evidence to support such a conclusion. Indications from the general public on this possibility have been mixed, at best. If, at some point in the future, a clear indication is received that a majority of Wantage Township residents wish to own Lake Neepaulin, the governing body would at that time investigate the option of taking title to the Lake and assuming the remainder of the dam repair loan repayment through a town-wide repayment. Until it is known whether or not the entire Township desires to own Lake Neepaulin, the governing body does not recognize this option as a solution. In any case, without clear majority support for this option by the Wantage Township public, it is not an option available for the consideration of settling this existing lawsuit.

FOR THOSE OF YOU WHO BELIEVE IT UNFAIR FOR RESIDENTS OF LAKE NEEPAULIN TO PAY FOR THE REPAIR OF A PRIVATE DAM THROUGH A SPECIAL ASSESSMENT, AND FOR THOSE OF YOU WHO THINK THE FRIENDS OF LAKE NEEPAULIN SHOULD PAY FOR THE ENTIRE COST OF THE DAM REPAIR: The Mayor and Committee of the Township of Wantage agree with you. It is not fair. FOLN should pay for the entire cost of the dam repair. However, the Judge has ruled that FOLN cannot be forced to pay for the entire cost of the repair, and in any case, the governing body is convinced that FOLN does not have the financial ability to undertake repayment of such a loan. **The governing body wishes that a settlement could have been reached that would be fair to every one. That option was not given to the governing body to pursue.** This reduces the issue down from a question of “what is fair” to the question of “what course of action will cause the least damage and do the most good?”

FOR THOSE OF YOU WHO BELIEVE THE BEST COURSE OF ACTION WOULD BE TO HAVE THE LAKE DRAINED AND THE DAM REMOVED: The Mayor and Committee of the Township of Wantage respectfully disagree with you. All indications and historical precedence point to the heavy likelihood that the State of New Jersey would charge Wantage Township for the costs of decommissioning the Dam, which costs in all likelihood would approach or match the costs of repairing the dam.

FOR THOSE OF YOU WHO BELIEVE THE ACTION BEING TAKEN IS “UNCONSTITUTIONAL”, AND/OR “ILLEGAL”, AND/OR “WRONG”: The Mayor and Committee of the Township of Wantage respectfully disagree with you.

FOR THOSE OF YOU WHO THREATEN TO HIRE A LAWYER AND SUE THE TOWNSHIP BECAUSE OF THIS SETTLEMENT: On the one hand, it is never the desire of the governing body to enter into a lawsuit if it can be avoided. On the other hand, **the governing body cannot be intimidated into taking action contrary to their beliefs regarding what constitutes the best interests of the community simply by receiving a threat of a lawsuit.** For these people, we are sorry that you do not agree with our decision. We recognize your right to challenge us. And if it comes down to it, we look forward to the opportunity of defending our decision in the proper legal venue, because we believe this action represents the only option available to protect the overall best interests of Wantage Township.

FOR THOSE OF YOU WHO THINK THE DETAILS OF THIS PROPOSED SETTLEMENT SHOULD HAVE BEEN RELEASED PRIOR TO TODAY: The Mayor and Committee of the Township of Wantage respectfully disagree with you. The proper forum for presentation of this proposed settlement is tonight’s meeting.

PAGE FIVE OF THE MINUTES OF SEPTEMBER 23, 2010

Prepared explanatory statement / position statement on the Lake Neepaulin Dam Settlement, Continued

FOR THOSE OF YOU WHO THINK THE PUBLIC SHOULD BE GIVEN AN OPPORTUNITY FOR INPUT BEFORE A VOTE IS TAKEN ON THIS PROPOSED SETTLEMENT TONIGHT: The Mayor and Committee of the Township of Wantage respectfully disagree with you. Over the past three years, we have already heard all of your opinions, suggestions, recommendations, and regrettably, in some cases, your threats. The Mayor and Committee of the Township of Wantage believe that all items of information relevant to this issue have already been presented, quite often several times over.

We value each and every one of your opinions. Unfortunately, it is impossible to embrace all of those opinions, so we have done the best that we can with the situation that was presented to us. Wantage Township is a representative democracy. As the duly elected representatives of this Township, the Mayor and Committee take this action by the powers granted under the laws of the State of New Jersey and by virtue of our election to office.

Thank you for the courtesy of listening to our position. We appreciate your patience and understanding over the course of the past several years as we dealt with one of the most divisive and difficult decisions in the history of Wantage Township.

The time for public input is over. The time for settlement of this lawsuit is now. The repercussions from this settlement must, regrettably, be faced by us all. We stand prepared to do so.

The Mayor and Committee of the Township of Wantage:
Clara Nuss
William DeBoer
William Gaechter

September 23, 2010

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Mr. DeBoer moved to authorize settlement of the Lake Neepaulin Dam litigation in accordance with the terms and conditions explained in the statement above. Mr. Gaechter seconded the motion. Upon roll call,

**Ayes:** DeBoer, Nuss, Gaechter **Nays:** None **Absent:** None **Abstain:** None

**NEW BUSINESS**

Mr. Doherty explained that, because of a discrepancy in the municipal calendar, he cited the incorrect public hearing date when Ordinances were introduced on September 9, 2010. Mr. Doherty suggested the governing body re-introduce Ordinance 2010-11 and 2010-12 with the correct public hearing dates cited for the record.

**Re-Introduction of Ordinance 2010-11**

Mr. Gaechter moved to Re-Introduce Ordinance 2010-11, entitled "ORDINANCE FIXING THE SALARIES OF OFFICERS AND EMPLOYEES OF THE TOWNSHIP OF WANTAGE, COUNTY OF SUSSEX AND STATE OF NEW JERSEY, FOR THE YEAR 2010". Final hearing date set for October 7, 2010.

Mr. DeBoer seconded the motion. Upon roll call,

**Ayes:** DeBoer, Nuss, Gaechter **Nays:** None **Absent:** None **Abstain:** None

**Re-Introduction of Ordinance 2010-12**

Mr. Gaechter moved to Re-Introduce Ordinance 2010-12, entitled "AN ORDINANCE TO AMEND CHAPTER II OF THE GENERAL ORDINANCES OF THE TOWNSHIP OF WANTAGE, BEING THE ADMINISTRATION CHAPTER". Final hearing date set for October 7, 2010. Mr. DeBoer seconded the motion. Upon roll call,

**Ayes:** DeBoer, Nuss, Gaechter **Nays:** None **Absent:** None **Abstain:** None

**Approval of Minutes**

Mr. DeBoer moved to approve the Regular Minutes of the Meeting of September 9, 2010. The motion was seconded by Mr. Gaechter. Upon roll call,

**Ayes:** DeBoer, Nuss, Gaechter **Nays:** None **Absent:** None **Abstain:** None

**PAGESIX OF THE MINUTES OF SEPTEMBER 23, 2010**

**OPEN PUBLIC SESSION**

Mayor Nuss opened the meeting to the public for any questions or comments.

William Gettler, Gemmer Road, offered comments and observations regarding his displeasure with the Lake Neepaulin settlement.

Karen Merritt suggested the governing body consider placing a referendum question on the ballot to ascertain the sentiments of the voters with respect to whether or not a majority of the citizens of Wantage Township desire to own Lake Neepaulin.

A resident of South Shore Drive expressed his dissatisfaction with the settlement.

Another resident also expressed dissatisfaction with the settlement.

As there was no one else present wishing to address the governing body, Mayor Nuss closed the meeting to the public.

As there was no further business to discuss, Mr. DeBoer moved to adjourn the meeting.

Mr. Gaechter seconded the motion. Upon roll call,

**Ayes:** DeBoer, Nuss, Gaechter      **Nays:** None      **Absent:** None      **Abstain:** None

Mayor Nuss declared this meeting to be adjourned.

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James R. Doherty, Administrator/Clerk