

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Meeting called to order at 7:00 p.m. by President McGuigan. Roll call was recorded as follows:

Present: D'Adamo, Dill, Kern, Smith, Tapp, Triboletti & McGuigan

Also Present: Mayor Glasser, Administrator Swain, Atty. Franklin, Clerk Degrassi & Deputy Clerk Samuelson

Absent: None

Open Public Meetings Act

Pursuant to the Open Public Meetings Act, adequate notice of this meeting has been provided. Agenda for this meeting has been provided to two local newspapers and posted in the City Clerk's Office

Communications

Presentation of design plan for addition to DeFeo Lane Sewer Building

Mr. William McLeese made a presentation to the Governing Body with regard to a fifteen foot wide addition being proposed for storage space, vehicles and equipment. He explained that the zone is exempt. After discussion, Atty. Franklin advised that it may be prudent to notice anyway. The governing body was in favor of this design.

Councilwoman Kern advised that Mainland Regional High School has passed a resolution to move their school election to November during the general election. Council President McGuigan stated that the local Board of Education has also voted to move their election to November.

Council President McGuigan advised that he has received a letter from the Bayfest Committee requesting that we close Bay Avenue for the Bayfest on April 28th.

Council President McGuigan advised that he received an email from a person in Colorado regarding the environmental impact of storm water in Somers Point. He stated that he will respond to this next week after everyone has an opportunity to review it.

Committee Reports

Mayor Glasser gave the Police Department report stating that they will be having a Crime Prevention Workshop on February 15th from 7-9 p.m. in the Council Chambers.

Administrator Swain advised that he has filed the Annual Debt Statement and other various financial documents and is working on the Financial Statement. He further stated that they are starting to put together a draft budget.

Minutes

The regular meetings of March 24, 2011, April 14, 2011, May 26, 2011, June 9, 2011 and July 28, 2011 were approved unanimously.

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Page 2

ORDINANCES

Ordinance No. 1 – First Reading

M/S – Dill/Tapp

Council President McGuigan explained that this ordinance was discussed previously last year and was tabled due to some discussions and time constraints at the end of the year. He stated that one of the changes is an appeal process that was not part of the previous ordinance. Ordinance No. 1 was then passed on first reading by a unanimous vote of those present.

ORDINANCE 1 OF 2012

An Ordinance Supplementing and Amending Chapter 48 of the Somers Point Municipal Code “Board of Recreation Commissioners” to authorize the Somers Point Board of Recreation Commissioners to require each current and prospective employee or volunteer of a nonprofit youth organization, program or other recreational, cultural, charitable or social activity sponsored, financially supported or endorsed by the City of Somers Point and which provide recreational, cultural, charitable, social or other activities principally to minors under eighteen (18) years of age to provide written consent to undertake a criminal background check and to adopt Rules and Regulations providing for the processing of such criminal background checks; and Repealing All Ordinances Heretofore Adopted, The Provisions of Which Are Inconsistent Herewith.

WHEREAS, N.J.S.A. 15A:3A-1 et. seq. permits nonprofit youth serving organizations that provide recreational, cultural, charitable, social or other activities to request the State Police to perform a criminal background check on current and prospective employees or volunteers who have direct contact with minors under eighteen (18) years of age in order to eliminate or disqualify those with convictions of certain crimes as more specifically set forth within N.J.S.A. 15A:3A-3; and

WHEREAS, the Somers Point Board of Recreation Commissioners has requested the Governing Body of the City of Somers Point to enact an Ordinance which authorizes the Chairman of the Board of Recreation Commissioners (the “Board”) to designate the Board’s Director of CER (Community, Recreation and Education) as the person authorized to request each current and prospective employee or volunteer of a nonprofit youth organization, program or other recreational, cultural, charitable or social activity sponsored, financially supported or endorsed by the City of Somers Point and which provide recreational, cultural, charitable, social or other activities principally to minors under eighteen (18) years of age to provide written consent to undertake a criminal background check and to coordinate the criminal background checks, schedule the fingerprinting and photographing of each such employee and volunteer; and

WHEREAS, the Somers Point Board of Recreation Commissioners has further requested that the Governing Body of the City of Somers Point include within the Ordinance a requirement that all other nonprofit organizations, programs and activities which provide recreational, cultural, charitable, social or other activities principally to minors under eighteen (18) years of age which are not sponsored, financially supported or endorsed by the City of Somers Point or the Somers Point Board of Recreation Commissioner but which utilize City owned facilities or parks be required to certify by affidavit as an essential part of their Application to utilize those City owned facilities or parks that the organization, program or activity has subjected each of its employees and volunteers to a criminal background check in compliance with N.J.S.A 15A:3A-1 et. seq. which the Somers Point Board of Recreation Commissioners shall be entitled to rely upon and which certification by way of affidavit shall be maintained on file by the Commissioners; and that such a requirement shall be included within the Rules and Regulations established by the Somers Point Board of Recreation Commissioners; and

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Page 3

Ordinance No. 1 (Continued)

WHEREAS, the Governing Body of the City of Somers Point acknowledges that undertaking a criminal background check of all such employees and volunteers who provide recreational, cultural, social or other activities principally involving minors under the age of eighteen (18) years is in the best interest of the City, the Board of Recreation Commissioners, our citizens and for the protection of our children, and is authorized by the State Legislature as a proper exercise of the police power; and

WHEREAS, it is the intention of the Governing Body of the City of Somers Point that the Board of Recreation Commissioners of the City of Somers Point prepare and maintain on file at all times a true and complete list of all nonprofit youth organizations, programs or activities which are sponsored, financially supported or endorsed by the City of Somers Point or the Somers Point Board of Recreation Commissioners to which this Ordinance shall apply, which list shall be available for public inspection.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Somers Point, County of Atlantic, and State of New Jersey as follows:

SECTION 1: Somers Point Municipal Code Chapter 48: Board of Recreation Commissioners is hereby amended to add Section 48 – 7 Criminal History Background Checks as follows:

Section 48 – 7. Criminal History Background Checks.

Section 48 – 7.1. Definitions.

As used in this Section, the following terms shall have the meanings indicated:

CRIMINAL HISTORY RECORD BACKGROUND CHECK

A determination of whether a person has a criminal record by cross-referencing that person's name, fingerprints, social security number and date of birth with those on file with the Federal Bureau of Investigation, Identification (SI) Division, and/or the State Bureau of Identification of the New Jersey State Police.

CURRENT AND PROSPECTIVE EMPLOYEES OR VOLUNTEERS

A person of the age of eighteen years or older who is or intends to be employed by and/or volunteers to participate on behalf of a nonprofit youth organization or program which provides recreational, cultural, charitable, social or other activities or services principally to minors under the age of 18 years.

NONPROFIT YOUTH ORGANIZATION PROGRAM OR ACTIVITY

A nonprofit youth organization, program or activity, excluding public and nonpublic schools, principally involving minors under 18 years of age that provides recreational, cultural, charitable, social or other activities or services that are endorsed, supported or sponsored by the City of Somers Point or the Somers Point Board of Recreation Commissioners, receives funding from the City of Somers Point or the Somers Point Board of Recreation and any such organization or program which is not endorsed, financially supported or sponsored by the City of Somers Point or the Somers Point Recreation Commission cut which requests permission to utilize City owned facilities or parks or facilities and parks which are under the jurisdiction or control of the Somers Point Board of Recreation.

The Somers Point Board of Recreation Commissioners shall prepare and maintain on file and available for public inspection a list of all nonprofit youth organizations, programs or activities endorsed, supported or sponsored by the City of Somers Point or the Somers Point Board of Recreation Commissioners and which are within the scope of this Ordinance.

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Page 4

Ordinance No. 1 (Continued)

Section 48 – 7.2. Request for Criminal Background Checks and Consent as Condition of Participation in Nonprofit Organization, Program, Activity or Service Sponsored, Financially Supported, or Endorsed by the City of Somers Point or the Somers Point Board of Recreation Commissioners.

Every current and prospective employee or volunteer of a nonprofit youth organization, program or activity principally involving minors under 18 years of age that provides recreational, cultural, charitable, social or other activities or services endorsed, supported or sponsored by the City of Somers Point or the Somers Point Board of Recreation Commissioners shall submit to a criminal history background check prior to engaging in such activity.

Each current and prospective employee or volunteer shall provide his or her written consent to the criminal background check in order to be permitted to participate in nonprofit youth organization or activities as defined herein. Such written consent shall be submitted to the Director of CER (Community, Recreation and Education).

Section 48- 7.2.1 Renewal of Criminal Background Check.

Each criminal background check, upon receipt of qualification, shall be valid for a period of five (5) years after which each employee and volunteer shall submit a new application.

In each of the intervening years between criminal background checks, each employee and volunteer shall certify to the Director of CER in writing that there has been no change in circumstances which would result in a disqualification of that employee or volunteer.

In the event an employee or volunteer is convicted of any of the crimes or disorderly persons offenses specified in Section 48-7.5 of this Chapter, such employee or volunteer shall promptly inform the Director of CER within thirty (30) days of such conviction and shall thereupon be disqualified from continuing to serve as an employee or volunteer.

In the event, however, that any such employee or volunteer shall be charged or arrested for sexual misconduct or a crime or disorderly offense of the type specified in Section 48-7.5, either in this state or without, although the volunteer or employee shall be given the presumption of innocence as to such charges or arrests, such employee or volunteer shall promptly notify the Chief of Police and the Director of CER following any such charge or arrest.

Section 48 – 7.3. Cost of Conducting Criminal Background Check.

The costs of the criminal history record background check are to be borne by the employee or volunteer seeking to participate on behalf of a nonprofit youth organization, program or activity. Upon successful completion of the criminal background check one-half of the fee for the criminal record background check will be refunded by the Board to the employee or volunteer of the nonprofit youth organization, program or activity endorsed, supported or sponsored by the City of Somers Point or the Somers Point Board of Recreation Commissioners. No refund shall be made if the criminal background check is not successfully approved and the applicant is disqualified; nor shall any refund be made to any employee or volunteer in a youth organization, program or activity which is not endorsed, supported or sponsored by the City of Somers Point or the Somers Point Board of Recreation Commissioners. The Somers Point Board of Recreation Commissioners shall prepare and maintain on file a list of all nonprofit youth organizations, programs or activities endorsed, supported or sponsored by the City of Somers Point or the Somers Point Board of Recreation Commissioners and which are within the scope of this Ordinance.

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Page 5

Ordinance No. 1 (Continued)

Section 48 – 7.4. Procedure for Processing Criminal Background Checks.

The Somers Point Board of Recreation Commissioners shall from time to time establish procedures for notifying employees and for processing all Criminal Background Checks which shall be consistent with the requirements of N.J.S.A. 15A:3A-1 et. seq. and which shall:

A. Require that all youth organizations, programs or activities endorsed, sponsored, or supported by the City of Somers Point or the Somers Point Board of Recreation Commission shall submit a list of names, addresses and a written consent form from all prospective and current employees and volunteers to the Director of CER (Community, Recreation and Education) of the City of Somers Point.

B. The Director of CER shall coordinate the criminal background checks and schedule the fingerprinting and photographing through the Somers Point Police Department to the extent necessary.

C. The Somers Point Board of Recreation Commission shall engage the services of a third-party independent agency approved by the State of New Jersey to conduct the criminal history record background checks authorized under this article to provide the following services:

(1) Provide on-site representative to photograph and fingerprint all volunteers and/or employees.

(2) Collect, review for accuracy, and deliver all fingerprint cards to the New Jersey State Police.

(3) Notify the Somers Point Board of Recreation of the qualification of each applicant based upon information received from the New Jersey State Police.

(4) Issue photograph identification cards for all volunteers and/or employees who have successfully passed the background record check to the Board of Recreation Commission which shall issue the identification card to the applicant.

(5) Issue and update rosters of all processed applicants to the Somers Point Board of Recreation Commissioners.

(6) Secure and maintain at all times during the term of the contract general public liability insurance with a minimum limit of liability of \$1,000,000, and statutory workers' compensation, with coverage in amounts as required by New Jersey statutes. The agency shall provide the Somers Point Board of Recreation Commissioners with a certificate of insurance naming the City of Somers Point and The Somers Point Board of Recreation Commissioners as Additional Insureds under the general liability policy and evidencing the above coverage and limits of liability with the obligation to provide a minimum of 30 days' advance written notice prior to any cancellation or alteration of any of the policies referred to in the certificate.

(7) At all times during the term of contract secure and maintain a policy of Professional Liability Insurance with a minimum coverage limit of \$1,000,000.

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Page 6

Ordinance No. 1 (Continued)

Section 48 – 7.5. Conditions of Disqualification.

Subject to the appeal procedure provided by Section 48 –7.8, a person shall be disqualified from serving as an employee or volunteer of such a nonprofit organization, program or activity if that person's criminal history record background check reveals a record of conviction of any of the following crimes or disorderly persons offenses:

A. In New Jersey, any crime or disorderly persons offense:

(1) Involving danger to the person, meaning any of those crimes and disorderly persons offenses set forth in N.J.S.A. 2C:11, Homicide, N.J.S.A. 2C:12, Assault; Endangering; Threats, N.J.S.A. 2C:13, Kidnapping, N.J.S.A. 2C:14, Sexual Offenses, or N.J.S.A. 2C:15, Robbery;

(2) Against the family, children, or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.A. 2C: 24-1 et seq.;

(3) Involving theft as set forth in Chapter 20 of Title 2C of the New Jersey Statutes;

(4) Involving any controlled dangerous substance or controlled substance analog as set forth in Chapter 35 of Title 2C of the New Jersey Statutes except Paragraph (4) of Subsection a of N.J.S.A. 2C: 35-10, possession of 50 grams or less of marijuana.

B. In any other state of jurisdiction, conduct, which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in Subsection A of this section.

C. Violation of any other statute which the New Jersey Legislature may from time to time add to the list of disqualification by amendment or supplement to N.J.S.A. 15A:3A-3 or which the Criminal Background Investigation shall include as a basis for disqualification.

Section 48 – 7.6. Notification of Disqualification.

If a person is determined to be disqualified from serving as an employee or volunteer of such an organization, program or activity because the criminal history record background check reveals a record of conviction as listed above:

A. A copy of the notification of disqualification will be sent directly from the State of New Jersey, Office of the Attorney General, Department of Law and Public Safety, Division of State Police, or the third-party agency, to the applicant, the third-party provider, and the Director of CER of the Somers Point Board of Recreation Commissioners.

B. No entity within the process will be privy to specific contents of the applicant's criminal background other than the applicant. The applicant may obtain a copy of the criminal history record directly from the New Jersey State Police.

C. Any applicant who receives a notice of disqualification shall have the right to pursue the matter with the third- party provider but all fees and costs shall be the sole responsibility of the applicant and shall not be subject to reimbursement or refund by the Somers Point Recreation Commission. If the disqualification is removed and the applicant is subsequently found to be qualified, one – half of the initial fee will be refunded to the applicant.

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Page 7

Ordinance No. 1 (Continued)

D. The rules and regulations concerning access to and dissemination of information obtained as a result of conducting a criminal history record background check have been established by the New Jersey attorney General pursuant to the Administrative Procedures Act which shall control.

Section 48 – 7.7 Youth Protection Program Appeal Panel.

A. In order to monitor and supervise the enforcement of this article as well as hear appeals, a three (3) member Youth Protection Program Appeal Panel shall be established which shall be comprised of the Chief of Police, the Mayor of the City of Somers Point and the Director of CER.

B. In the event the designated member shall be unable to participate in an appeal, the following designated alternate representatives shall appear and participate:

(1) For the Chief of Police, the second highest ranking officer appointed to serve in the Police Department;

(2) For the Mayor, the Council President Pro Tem; and

(3) For the Director of CER, the Chairperson of the Somers Point Board of Recreation.

C. All members or designated alternates shall serve without additional compensation.

Section 48 – 7.8. Appeal Process.

A. All current and prospective employees or volunteers whose criminal history background check disqualifies such person from employment or from volunteering may appeal his or her disqualification on the basis that the person has been rehabilitated. Such person may appeal the disqualification determination by filing a written notice of appeal with the Director of CER together with all supporting documentation evidencing the rehabilitation.

B. Such appeal must be filed in writing by the disqualified individual within twenty (20) calendar days following the date set forth on the Notice of Disqualification. There shall be no extensions granted and failure to comply with the time period shall constitute a waiver of the right of appeal.

C. All appeal requests shall be held before the Youth Protection Program Appeal Panel not later than thirty (30) calendar days after receipt of the written notice of appeal together with the complete appeal application materials provided by the appellant; and a written determination shall be made and mailed to applicant advising whether, in the opinion of the Appeal Panel the employee or volunteer qualifies for service. The decision of the Appeal Panel must be unanimous in order to be approved. The decision of the Appeal Panel shall be final and not subject to further appeal or challenge.

D. At the hearing the employee or volunteer shall have the right to appear and be heard, to be represented by an attorney, and present witnesses in his or her own behalf, Rules of Evidence shall not apply and the proceeding is not adversarial. The burden to convince is solely upon the Appellant.

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Page 8

Ordinance No. 1 (Continued)

E. The Youth Protection Program Appeal Panel may overturn a disqualification determination if the employee or volunteer is able to demonstrate by clear and convincing evidence that they have been sufficiently rehabilitated so as to make them eligible to serve the organization.

F. In determining whether a person has affirmatively demonstrated rehabilitation, the Appeals Committee may consider the following factors:

- (1) The nature and responsibility of the position which the convicted person would hold or has held, as the case may be;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the person committing the offense when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social or environmental conditions which may have contributed to the offense; and
- (8) Any other evidence of rehabilitation, including a certificate of rehabilitation issued pursuant to N.J.S.A. 2A:168A-7 et seq., good conduct in prison or the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the person under their supervision.

G. If the Appeals Committee determines in its sole discretion based upon the information provided that the disqualified person has been successfully rehabilitated, it shall direct that that person's name be entered on the list of qualified employees and volunteers maintained by the Director of CER.

H. A person shall not under any circumstances be eligible for a certificate of rehabilitation or approval as a qualified employee or volunteer pursuant to N.J.S.A. 2A:168A-7 if that person has been convicted of:

- (1) A first degree crime;
- (2) An offense to which N.J.S.A. 2C:43-7.2 (eligibility for parole; persons convicted of certain violent crimes) applies;
- (3) A second degree offense defined in Chapters 13 (kidnapping and related offenses; coercion); 14 (sexual offenses); 15 (robbery); 16 (bias crimes); 24 (offenses against the family, children and incompetents); 27 (bribery and corrupt influence); 30 (misconduct in office; abuse of office); 33 (riot, disorderly conduct and related offenses); and 38 (September 11th, 2001 Anti-Terrorism Act - See N.J.S.A. 2C:1-1 et seq.);
- (4) A violation of N.J.S.A. 2C:24-4a or of N.J.S.A. 2C:24-4b(4) (endangering the welfare of children);

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Page 9

Ordinance No. 1 (Continued)

(5) A crime requiring registration pursuant to N.J.S.A. 2C:7-2 (Megan's Law);

(6) A crime committed against a public entity or against a public officer;

(7) A crime enumerated in N.J.S.A. 43:1-3.1b(2) (theft by deception) committed by a public employee, which involves or touches upon the employee's office, position or employment, such that the crime was related directly to the person's performance in, or circumstances flowing from, the specific public office or employment held by the person;

(8) Any crime committed against a person 16 years of age or younger, or a disabled or handicapped person; or

(9) A conspiracy or attempt to commit any of the crimes described in this Section 48-7.8 (H).

I. Restriction Upon Dissemination of Confidential Information.

Members of the Appeals Committee and their designees shall limit their use of the criminal history record information provided by Appellant solely to the authorized purpose for which it was obtained. Criminal history record information furnished shall not be disseminated to persons or organizations not authorized to receive the records for authorized purposes; and shall not be disseminated to any unauthorized persons. This record, in whatever form it exists, including electronically or via computer, shall be destroyed immediately by the Appeals Committee after it has served its intended and authorized purpose. Any person violating federal or state regulations governing access to criminal history record information may be subject to criminal and/or civil penalties.

Section 48 – 7.9. Certification by Affidavit by Other Responsible Person as an Essential Element of Application to Utilize Any Facility or Park owned by the City of Somers Point and as a Precondition for Such Use.

- A. The President, Director, Sponsor, Leader, or other responsible person in charge of any nonprofit organization or program which provides recreational, cultural, charitable, social or other activities or services principally involving minors under the age of eighteen (18) years which is not sponsored, financially supported or endorsed by the City of Somers Point or the Somers Point Board of Recreation Commissioners, and which requests the use of any facility or park owned by the City of Somers Point or under the jurisdiction of the Somers Point Board of Recreation Commissioners, shall, as an essential part of each Application submitted to the Somers Point Board of Recreation Commissioners for such use submit a certification by Affidavit that the organization or program has subjected each of its employees and volunteers to a criminal background check in compliance with N.J.S.A 15A:3A-1 et. seq. and has disqualified any person which the Somers Point Board of Recreation Commissioners shall be entitled to rely upon and which shall be maintained on file by the Somers Point Board of Recreation Commissioners. Failure to submit the required Affidavit shall render the Application incomplete and shall make the organization or program ineligible to use any such facility or field until the condition shall have been satisfied.
- B. The requirement set forth in Subsection A shall not apply to any program, activity or service which is sponsored or engaged in by a public or nonpublic school.

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Page 10

Ordinance No. 1 (Continued)

C. The Somers Point Board of Recreation Commissioners shall include the requirements of this Section of the Ordinance within its Rules and Procedures for use of City owned facilities and parks and shall make the Affidavit requirement a part of its Application Form.

SECTION 2: All other provisions of Chapter 48 shall remain in full force and effect and shall apply to this amendment upon the effective date of this Ordinance

SECTION 3: All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistencies.

SECTION 4: Should any section, clause, sentence, phrase or provision or any item in any schedule of this ordinance be declared unconstitutional or invalid by a Court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance

SECTION 5: This ordinance shall take effect upon its final passage, publication and adoption in the manner prescribed by law.

FIRST READING: January 26,2012

PUBLICATION: February 1, 2012

FINAL PASSAGE: February 9, 2012

RESOLUTIONS

Public Portion on Resolutions

Meeting was opened to the public and duly closed.

Resolution No. 37

M/S – Kern/D’Adamo

Adopted by a unanimous vote of those present.

No. 37 of 2012

Subject: Change Order – Kern Field Pond Improvements

Introduced By: Councilman Dill

WHEREAS, in accordance with Resolution 145 of 2011, Ocean Construction, LLC of Linwood, NJ was awarded the contract for the Kern Field Pond Improvements for the sum of \$64,069.00; and

WHEREAS, during the course of construction changes were made to reflect as-built quantities of the timber retaining wall; and

WHEREAS, the Recreation Board and the City’s insurance agent has recommended that a railing be installed and the end of the constructed dock; and

WHEREAS, the City Engineer has recommended approval of these changes; and

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

WHEREAS, those changes have resulted in a change of the contract amount as follows:

Base Contract	\$64,069.00
Change order 1	\$3,617.00
Revised Contract Amount	\$67,686.00

Total Deduction: \$0 Total Additional: \$3,617.00 Net Change: 5.65%

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Somers Point that the above listed change to the contract for the Kern Field Pond Improvements is hereby approved and that the Mayor is hereby authorized and directed to execute all documents in this regard on behalf of the City.

Resolution No. 38

M/S – Kern/D’Adamo

Adopted by a unanimous vote of those present.

No. 38 of 2012

Subject: Appointment of Tax Assessment Appraisal Services

Introduced By: Councilman Smith

WHEREAS, the City of Somers Point has identified a need for Tax Assessment Appraisal Services for 2012; and

WHEREAS, this contract is awarded through a fair and open process pursuant to N.J.S. 19:44A-20.4 et. seq.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Somers Point as follows:

1. Conover Appraisal Associates, LLC be and hereby is appointed as Tax Assessment Appraisal Consultant for the City of Somers Point for the period of January 1, 2012 to December 31, 2012.
2. This appointment is awarded without competitive bidding as a “Professional Service” under the provisions of the Local Public Contracts Law because public bidding is not required for said service.
3. The City Administrator is hereby authorized to execute an agreement with Conover Appraisal Services, LLC in connection with these services, and, upon execution, the agreement will be attached to this resolution and become a part hereof.
4. As indicated in the Division of Local Government Services Local Finance Notice 2006-7, because this is awarded through a Fair and Open process, further public notice per N.J.S.A. 40A:11.5 (6) is not required.

Resolution No. 39

M/S – Dill/Triboletti

Adopted by a unanimous vote of those present.

No. 39 of 2012

Subject: Awarding the Bid for one (1) Refuse Truck

Introduced By: Councilman Dill

WHEREAS, on November 30, 2011 the City of Somers Point received bids for one (1) refuse truck; and

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Resolution No. 39 (Continued)

WHEREAS, bid packages were received by seven vendors and bids were received from two vendors, both of which proposed that the completed unit would be delivered within 150 working days; and

WHEREAS, the Base Bid included a new refuse truck with natural gas engine and the Alternate Bid included a included a new refuse truck with diesel engine; and

WHEREAS, Cruzan's Truck Service Inc., trading as Cruzan's Freightliner, of Bridgeton, New Jersey was the lowest responsible bidder, bidding both the Base Bid and Alternate Bid; and

WHEREAS, the Director of Public Works has recommended that the City award the contract to Cruzan's Truck Service Inc., trading as Cruzan's Freightliner, of Bridgeton, New Jersey in the amount of \$159,790.00 for the Alternate Bid; and

WHEREAS, the City Administrator concurs with that recommendation.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Somers Point as follows:

- 1.) The Contract for one 2012 or newer refuse truck is hereby awarded to Cruzan's Truck Service Inc., trading as Cruzan's Freightliner, of Bridgeton, New Jersey on the basis of the bid Alternate in the total amount of \$159,790.00 .
- 2.) The City Administrator is hereby authorized and directed to enter into a formal contract with Cruzan's Truck Service Inc., trading as Cruzan's Freightliner, of Bridgeton, New Jersey, signing on behalf of the City.

Resolution No. 40

M/S – D'Adamo/Kern

Resolution was amended to change the publication dates to February 10th and February 15th and adopted, as amended.

No. 40 of 2012 (As Amended)

Subject: Authorizing RFP's for lease of Pier
Introduced By: Councilman Tapp

WHEREAS, the City of Somers Point is in possession of a property known as Block 1612, Lots 2 & 2.01 on the tax maps of the City of Somers Point, located at Higbee and Bay Avenue; and

WHEREAS, this property was acquired by the City with financial assistance under the Green Trust Local Assistance Program; and

WHEREAS, this property includes a recreation pier and boating facility; and

WHEREAS, N.J.S.A. 40:61-1. et seq. states that the governing body of any municipality may let out and rent any privilege in any of its parks, beaches, waterfronts and places for public resort and recreation, to the highest responsible bidder therefore, after advertisement of the time and place of such letting, at least ten days prior to receipt of bids, in a newspaper circulating in the municipality, and upon such terms and conditions as it may prescribe.

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Resolution No. 40 (Continued)

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Somers Point as follows:

1. The City Clerk is hereby directed to advertise the Requests for Proposals to lease a portion of the pier located at Higbee Avenue and the Bay from the City of Somers Point for use as a docking facility for a watercraft suitable for hire for fishing, sightseeing, and party excursions, a copy of which is attached hereto and made a part hereof.

2. Said advertisement shall be published February 10, 2012, or as soon as possible thereafter, but no later than February 15, 2012.

3. All proposals must be received by the City Clerk no later than 4:00 p.m. on February 24, 2012 at which time they will be publicly opened, announced and recorded in the City Council Chambers.

4. It is understood that the use of the pier as described in this Request for Proposal must be approved by the New Jersey Department of Environmental Protection Green Trust Local Assistance Program (Green Acres) as well as the Somers Point Board of Recreation.

Resolution No. 41

M/S – D’Adamo/Triboletti

Adopted by a unanimous vote of those present.

**RESOLUTION NO. 41 of 2012
AUTHORIZING EXECUTIVE SESSION**

WHEREAS, while the Sen. Byron M. Baer Open Public Meetings Act (N.J.S.A. 10:4-6 et seq.) requires all meetings of the Somers Point City Council to be held in public, N.J.S.A.10:4-12(b) sets forth nine (9) types of matters that may lawfully be discussed in “Executive Session,” i.e. without the public being permitted to attend, and

WHEREAS, the Somers Point City Council has determined that **FOUR** related topics which involve proposals presented by BAY AVENUE REDEVELOPERS, L.L.C., and SHORE MEDICAL CENTER (formerly known as SHORE MEMORIAL HOSPITAL) are matters permitted by N.J.S.A. 10:4-12(b) as an exception to public meetings and are necessary to be discussed without the public in attendance during an Executive Session to be held on January 26, 2012 during a public meeting to be held commencing at 7:00 P.M, and

WHEREAS, the nine (9) exceptions to public meetings set forth in N.J.S.A. 10:4-12(b) are listed below, and next to each exception is a box within which the **number of issues** to be privately discussed that fall within that exception shall be written, and after each exception is a space where additional information that will disclose as much information about the discussion as possible without undermining the purpose of the exception shall be written.

“(1) Any matter which, by express provision of Federal law, State statute or rule of court shall be rendered confidential or excluded from public discussion.” The legal citation to the provision(s) at issue is: _____ and the nature of the matter, described as specifically as possible without undermining the need for confidentiality is N/A ;

“(2) Any matter in which the release of information would impair a right to receive funds from the federal government.” The nature of the matter, described as specifically as possible without undermining the need for confidentiality is N/A ;

“(3) Any material the disclosure of which constitutes an unwarranted invasion of individual privacy such as any records, data, reports, recommendations, or other personal

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Resolution No. 41 (Continued)

material of any educational, training, social service, medical, health, custodial, child protection, rehabilitation, legal defense, welfare, housing, relocation, insurance and similar program or institution operated by a public body pertaining to any specific individual admitted to or served by such institution or program, including but not limited to information relative to the individual's personal and family circumstances, and any material pertaining to admission, discharge, treatment, progress or condition of any individual, unless the individual concerned (or, in the case of a minor or incompetent, his guardian) shall request in writing that the same be disclosed publicly." The nature of the matter, described as specifically as possible without undermining the need for confidentiality is

N/A

"(4) Any collective bargaining agreement, or the terms and conditions of which are proposed for inclusion in any collective bargaining agreement, including the negotiation of terms and conditions with employees or representatives of employees of the public body" The collective bargaining contract(s) discussed are between the City and _____

N/A

"(5) Any matter involving the purchase lease or acquisition of real property with public funds, the setting of bank rates or investment of public funds where it could adversely affect the public interest if discussion of such matters were disclosed." The nature of the matter, described as specifically as possible without undermining the need for confidentiality is

N/A

"(6) Any tactics and techniques utilized in protecting the safety and property of the public provided that their disclosure could impair such protection. Any investigations of violations or possible violations of the law." The nature of the matter, described as specifically as possible without undermining the need for confidentiality is _____

N/A

"(7) Any pending or anticipated litigation or contract negotiation in which the public body is or may become a party. Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer."

The parties to and docket numbers of each item of litigation and/or the parties to each contract discussed are and the nature of the discussion, described as fully as possible without undermining the need for confidentiality is:

A report by the Somers Point City Solicitor on certain requests which have been made through their counsel to the City of Somers Point by Shore Memorial Hospital and to the Somers Point Planning Board Concept Review Committee regarding property owned by Bay Avenue Developers, LLC which pertain to the Settlement Agreement dated May 7, 2007 related to a builder's remedy suit instituted against the City of Somers Point, the Somers Point Planning Board and the Somers Point Zoning Board of adjustment in the below described matter:

CAPTION and TAX COURT DOCKET NO. WHERE KNOWN; OR BY TAX YEAR IF NO DOCKET NUMBER ASSIGNED:

1.) BAY AVENUE REDEVELOPERS, L.L.C., BASS HARBOR, L.L.C., HARBOR COVE MARINA, L.L.C., and S.P. #2

Plaintiffs,

v.

CITY OF SOMERS POINT, the CITY OF SOMERS POINT PLANNING BOARD and the CITY OF SOMERS POINT ZONING BOARD,

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Resolution No. 41 (Continued)

Defendants.
Filed in the:
SUPERIOR COURT OF NEW JERSEY

LAW DIVISION - ATLANTIC COUNTY

DOCKET NO: L-3204-05 P.W.

CIVIL ACTION - **MOUNT LAUREL**

2.) A discussion of the legal implications of a potential application to the Court in the below described civil action:

IN THE MATTER OF THE APPLICATION OF THE CITY OF SOMERS POINT, A Municipal Corporation of the State of New Jersey filed in the New Jersey Superior Court DOCKET NO.: ATL-L-002835-07.

3.) 2009 Tax Appeal Block 1212, Lot 2.01 in the Matter of Shore Health Services Corp v. Somers Point.

4.) 2007 Judgment entered in the New Jersey Tax Court against the City in favor of Shore Health Services Corp.

“(8) Any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting.” Subject to the balancing of the public’s interest and the employee’s privacy rights under South Jersey Publishing Co. v. New Jersey Expressway Authority, 124 N.J. 478, the employee(s) and nature of the discussion, described as specifically as possible without undermining the need for confidentiality is: N/A

“(9) Any deliberation of a public body occurring after a public hearing that may result in the imposition of a specific civil penalty upon the responding party or the suspension or loss of a license or permit belonging to the responding party as a result of an act of omission for which the responding party bears responsibility.” The nature of the matter, described as specifically as possible without undermining the need for confidentiality is: N/A

WHEREAS, the length of the Executive Session is estimated to be approximately 20 minutes after which the public meeting of the City Council shall reconvene;

NOW, THEREFORE, BE IT RESOLVED that the City Council of Somers Point will go into Executive Session for **only** the above stated reasons;

BE IT FURTHER RESOLVED that the City Council directs the City Clerk to make ten (10) photocopies of this resolution immediately after it passes and to distribute those photocopies to the public in attendance prior to the Executive Session commencing.

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Page 16
Resolution No. 41 (Continued)

BE IT FURTHER RESOLVED that the blank spaces within this form of resolution are to be filled out in conformity with a Consent Judgment and Memorandum of Understanding dated June 8, 2009 that arose that the City Council hereby declares that its discussion of the aforementioned subject(s) will be made public at a time when the public's interest in disclosure is greater than any privacy or governmental interest being protected from disclosure. For each of the above items, the estimated date by which such disclosure can be made and/or the occurrence that needs to take place before disclosure can be made are listed below (attach separate sheet if necessary)

Subject of Discussion	Estimated Date	Necessary Occurrence
See #7 above Attorney Client conference	Upon Completion or Resolution of the pending matters	Final Court Order / Final Resolution, Settlement or other final disposition of such matter; or determination made in open session following conference with counsel.

Resolution No. 42
Held until after the Executive Session

Resolution No. 43 – Removed from the consent agenda by a unanimous vote.

Consent Agenda
M/S – D’Adamo/Dill
Adopted by a unanimous vote of those present.

No. 44 of 2012

Subject: Authorizing Advertising for Bids for the reconstruction of Sunny Avenue from Meyran Avenue to Shuman’s Alley and Campbell Avenue from Shuman’s Alley to Harned Avenue

Introduced By: Councilman Dill

WHEREAS, the governing Body of the City of Somers Point has determined that it is the best interest of the City to reconstruct Sunny Avenue from Meyran Avenue to Shuman’s Alley and Campbell Avenue from Shuman’s Alley to Harned Avenue; and

WHEREAS, the city has received a \$57,388.00 grant from the Atlantic County Improvement Authority to complete this project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Somers Point that the City Engineer is hereby authorized to prepare plans and specifications for the reconstruction of Sunny Avenue from Meyran Avenue to Shuman’s Alley and Campbell Avenue from Shuman’s Alley to Harned Avenue; and

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Resolution No. 44 (Continued)

BE IT FURTHER RESOLVED that the City Clerk is authorized to advertise for bids in conformance with N.J.S.A. 40A:11-1 et seq., said bids to be received in the City Clerk's office at a time established thereafter in accordance with the specifications and in conformance with N.J.S.A. 40A:11-1 et seq.

No. 45 of 2012

Subject: Authorizing Advertising for Bids for the resurfacing of Laurel Drive from South Laurel Drive to New Road

Introduced By: Councilman Dill

WHEREAS, the governing Body of the City of Somers Point has determined that it is the best interest of the City to resurface Laurel Drive from South Laurel Drive to New Road; and

WHEREAS, the New Jersey Department of Transportation has awarded the City with a \$225,000.00 grant to complete this project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Somers Point that the City Engineer is hereby authorized to prepare plans and specifications for the resurfacing of Laurel Drive; and

BE IT FURTHER RESOLVED that the City Clerk is authorized to advertise for bids in conformance with N.J.S.A. 40A:11-1 et seq., said bids to be received in the City Clerk's office at a time established thereafter in accordance with the specifications and in conformance with N.J.S.A. 40A:11-1 et seq.

Resolution No. 43

M/S – D'Adamo/Kern

Adopted by a unanimous roll call vote of those present.

No. 43 of 2012

Subject: Appropriation Reserve Transfer
Introduced by: Council President McGuigan

Whereas N.J.S. 40A:4-1 et.seq. allows budget appropriation reserve transfers during the first three months of the succeeding year.

Now, therefore, be it resolved that the City Council of the City of Somers Point hereby authorizes the Chief Financial Officer to make the following budget transfer as specified in this resolution.

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Resolution No. 43 (Continued)

Current Fund

From:

Legal Services OE	1-01-20-155-200	\$ 3,000
Fire Department OE	1-01-25-255-200	5,000
Street Lighting	1-01-31-435-276	<u>2,000</u>
	Total	\$ 10,000

To:

Mayor & Council OE	1-01-20-110-200	\$ 3,000
Vehicle Maintenance OE	1-01-26-315-200	5,000
Diesel Fuel	1-01-31-447-274	<u>2,000</u>
	Total	\$ 10,000

New Business

Atty. Franklin explained that the Residence Inn has requested a hotel/motel liquor license and they have had one previously. He explained that the State allows these types of licenses to be put up for bid if the Council wants to do so, he could prepare the resolution for the next meeting. Council agreed, with Councilman D'Adamo abstaining, to have this resolution prepared for the next meeting.

Council President McGuigan stated that he has a request from CASA to use the Council Chambers on February 29th from 5:30 – 7:30 p.m. He stated that he is on the Board of Directors and will be abstaining. Request was approved by a 6-0 vote with Council President McGuigan abstaining.

Old Business

Councilman Dill stated that there were some flooding issues in the past with regard to Sunny and Connecticut Avenues. He stated that he believes that these issues have been completed to the satisfaction of our engineer. Greg Schneider from the Engineer's Office advised that the work had been completed according to the plan.

Discussion of Bills

The bills were presented for discussion in the amount of \$1,019,473.02. Administrator Swain advised that this list may be \$15.00 too much as he hasn't been able to verify this yet with the Finance Office, therefore, he wanted to make sure this was recorded in the minutes. There were also two additional bill lists in the amount of \$8,159.14 and \$8,752.73 for a total of \$1,036,384.89.

Public Portion

Ed ODonnell, 21 MacArthur Blvd. came forward and addressed the governing body regarding the problems with the hotels in town, asking that we raise the standards.

Jennifer Daull, Chapman Blvd., came forward and addressed the governing body regarding the congestion on Route 9 caused partially by New Jersey Transit. She asked that some of the bus stops be eliminated.

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Page 19

Payment of Bills

A motion was made and seconded to approve the bills in the total amount of \$1,036,384.89. Motion carried unanimously. A complete list of bills is on file in the Office of the Municipal Clerk.

RECESS

Council recessed to go into Executive Session, reconvening at 8:40 p.m. to consider Resolution No. 42, as follows:

Resolution No. 42

M/S – Kern/D’Adamo

Adopted by a unanimous vote of those present.

RESOLUTION No. 42 of 2012

**A RESOLUTION AUTHORIZING SPECIAL COAH COUNSEL
TO MAKE APPLICATION TO THE NEW JERSEY
SUPERIOR COURT FOR AUTHORIZATION TO
REFUND TO SHORE MEMORIAL HOSPITAL
A PAYMENT MADE INTO THE
CITY’S AFFORDABLE HOUSING TRUST FUND
PRIOR TO THE TIME REQUIRED BY THE
TERMS OF THE 1997 SETTLEMENT AGREEMENT**

WHEREAS, Pursuant to the “Settlement Agreement of Litigation” revised April 11, 2007 (“Settlement Agreement”) approved by the New Jersey Superior Court in the matter of BAY AVENUE REDEVELOPERS, L.L.C., BASS HARBOR, L.L.C., HARBOR COVE MARINA, L.L.C., and S.P. #2, Plaintiffs, v. CITY OF SOMERS POINT, the CITY OF SOMERS POINT PLANNING BOARD and the CITY OF SOMERS POINT ZONING BOARD, Defendants in Docket Number L-3204-05 P.W. Shore Memorial Hospital (“SMH”) had agreed to contribute Four Hundred Ninety Thousand Dollars (\$490,000) to the City’s Affordable Housing Trust Fund to be used by the City to fund a Regional Contribution Agreement (“RCA”) to provide affordable housing in the South-Southwest Housing Region and/or other housing activity that would assist the City’s satisfaction of its Mount Laurel obligation; and

WHEREAS, in accordance with the payment terms, SMH’s contribution was to be payable “in accordance with a payment schedule to be set forth in the RCA in accordance with Council On Affordable Housing’s rules, with each payment to be made to the City of Somers Point (“City”) at least sixty (60) days prior to the time that the City is required to tender payment to the receiving municipality....” ; and

WHEREAS, SMH has represented that in 2007, acting in good faith, it made a partial payment in the amount of One Hundred Sixty Three Thousand Thirty Three Dollars (\$163,033.00) which was deposited into the City’s Affordable Housing Trust Fund in anticipation that the RCA which had been executed by the City as the sending municipality and by the City of Bridgeton as the receiving municipality, and which had been submitted to COAH would be promptly approved and implemented; and

Page 20

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Resolution No. 42 (Continued)

WHEREAS, the New Jersey legislature thereafter acted to prohibit the use of RCAs prior to affirmative action being taken by COAH, the requirement in the Settlement Agreement that SMH pay the money "in accordance with a payment schedule to be set forth in the RCA in accordance with COAH's rules, with each payment to be made to the City at least sixty (60) days prior to the time that the City is required to tender payment to the receiving municipality ..." the funds were never used for that purpose nor will they ever be applied to that use since RCAs have been removed as an option; and

WHEREAS, the Settlement Agreement does contain a clause which provides for payment of the same amount should the RCA not get approved, SMH's obligation to make the payment is triggered only "... following notification by City of the alternative Affordable Housing purpose(s); provided, however, that no payment shall be required sooner than the later of January 2, 2008 or sixty days prior to the date upon which the City requires such funds for the alternative Affordable Housing purpose(s)"; and

WHEREAS, the City has not provided any such notice to SMH nor does the City have a current need for those funds for that purpose; and

WHEREAS, SMH has made a formal demand for return of those funds representing that SMH, as a nonprofit hospital, can better use these funds to carry out its mission to serve the health needs of the community; and

WHEREAS, SMH continues to be bound by the terms of the Settlement Agreement and has specifically reiterated that if and when the funds required to be paid to the City pursuant to the Settlement Agreement are needed by the City in order to carry out "other housing activity" that would assist in the City's satisfaction of its Affordable Housing obligation, SMH shall, upon notice from the City, make payment of the full amount of Four Hundred Ninety Thousand Dollars (\$490,000) in accordance with the Agreement; and

WHEREAS, the Governing Body of the City recognizes the legal obligation of SMH to comply with the terms of the Settlement Agreement at the appropriate time and further recognizes that as a nonprofit health care institution serving our community and our region, the funds which are sitting in the account and which are not being currently used could be better used by SMH at this time; and

WHEREAS, the Governing Body of the City believes that unless and until there is a need for those funds rather than risk any possibility of having to turn over those funds to the State of New Jersey to be used on behalf of other cities and towns, those funds should be preserved to be used to satisfy the needs of the City; and

WHEREAS, as a condition of the return of such funds SMH will represent to the Court and commit to honoring its contractual obligation which shall be fully enforceable against it

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Council of the City of Somers Point acknowledges and recognizes that the payment made by SMH was made in good faith and in prematurely to the time required by the terms of the Agreement; and

BE IT FURTHER RESOLVED that in response to the demand by SMH for a return of those monies, the City's Special COAH Counsel is authorized to file an application with the New Jersey Superior Court petitioning for authorization to refund to SMH the City's Affordable Housing Trust Fund the amount of One Hundred Sixty Three Thousand Thirty Three Dollars (\$163,033.00) in accordance with the terms of this Resolution and subject to the commitment by SMH to honor its contractual obligation when requested; and

BE IT FURTHER RESOLVED that the City and SMH shall abide by the decision of the Court and without any obligation to appeal or to defend against an appeal from such decision.

**REGULAR MEETING
MAYOR AND CITY COUNCIL
January 26, 2012**

Page 21

Adjournment

There being no further business, meeting adjourned at 8:45 p.m

Carol L. Degrassi, RMC/MMC
Municipal Clerk

Approved: