

**BOROUGH OF WESTWOOD
SPECIAL MEETING OF THE MAYOR & COUNCIL
OCTOBER 11, 2010 MINUTES
MUNICIPAL COMPLEX
101 Washington Avenue
7:30 PM Work Session/Closed Session As Necessary**

1. Opening of the Meeting:

The special meeting was called to order by Mayor Birkner at 7:30 pm. Mayor Birkner then read the Open Public Meetings Law Statement: "This meeting which conforms with the Open Public Meetings law, Chapter 231, Public Laws of 1975, is a regular Borough Council meeting. Notices have been filed with our local official newspapers and posted on the municipal bulletin board."

2. Roll Call:

Mayor Birkner – Present
Councilmember Grefrath - Present
Councilmember Phayre - Present
Councilmember Quinn - Present
Councilmember Sciara – Arrived 9:16 pm
Councilmember Waneck - Present
Council President Miller - Present
Borough Administrator Hoffmann - Present
Borough Attorney Huntington - Present
Borough Clerk Hughes - Present
Also present representing Boswell Engineering: James Kelly, Ed Senkevich, Jim Fordham

3. Discussion of Westvale Park

Mayor Birkner explained that the special meeting was called as a move to finalize the funding for the renovation of the facility at Westvale Park. The Governing Body wants to finalize all the funding, identify where the project is at within the original bond ordinance, and make the final decisions regarding the components that need to be completed for the project by the end of the month.

Mayor Birkner asked Mr. Hoffmann to review the accounting of all the expenditures and bills to date. Mr. Hoffmann said the accounting was current as of Thursday, October 7. He proceeded to review the financial analysis supplied by the CFO.

On page four of the analysis, Mr. Hoffmann explained that ordinance 10-4 was approved for \$2,730,000. There was an approved contract for Let It Grow as the lowest responsible bidder for \$2,493,842. There was also an approved resolution for Boswell Engineering to oversee the engineering and inspection for the project of \$230,000. When the project began there were other encumbrances charged to the Section 220 costs, such as newspaper notices, legal fees, and bond counsel fees, which total \$34,324.81. There is a breakdown of the costs in the ordinance run. Councilmember Waneck asked where the breakdown of the charges could be found. Mr. Hoffmann was unable to locate the breakdown quickly in Mr. Herr's analysis but said it was located under the soft cost Chapter 220 expenses. He advised that they were not contract or construction costs but costs for Gluck Walrath, North Jersey Media, some Boswell Engineering costs. Mayor Birkner asked what type of Boswell costs. Mr. Hoffmann said it was for the investigation and analysis of the bike path. Mayor Birkner

asked if that was the sample borings to indicate the path was not constructed to spec. Mr. Hoffmann said yes. Mayor Birkner reiterated that it was costs related to identifying what needed to be done to correct deficiencies. Mr. Hoffmann said yes. It also includes legal notices and any kinds of soft costs of that nature. Council President Miller said he could not locate those costs in the breakdown. Councilmember Waneck asked which bills constitute the \$34,324.81. Mr. Hoffmann said he was unable to identify them at the moment. He would identify them first thing in the morning. Councilmember Waneck asked if it was safe to say that the PSE&G bills were not part of it. Mr. Hoffmann said yes. Councilmember Grefrath asked where the CFO is. Mr. Hoffmann said Mr. Herr had a medical emergency in his family. Mr. Hoffmann offered to reach out to him by cell phone.

Mr. Hoffmann continued that when the previously encumbered bills were added to Ordinance 10-04, there was a negative balance of \$28,166.81 when the contract for Let It Grow was added. Part of that contract for Let It Grow included lighting that was authorized. Part of the lighting of the project for \$76,438 was moved into Ordinance 08-25 which was a lighting ordinance for Westvale Park. That moved Ordinance 10-04 back into balance, leaving it with a balance of \$42,271.19. Councilmember Waneck asked if money that was previously in an ordinance was added to the \$2,730,000. Mr. Hoffmann replied that Ordinance 08-25 had a balance that was for Westvale Park lighting, so those funds were applied. Councilmember Waneck stated that the money was added to the \$2,730,000. Mr. Hoffmann agreed.

Council President Miller said the \$42,271 is as of what date? Mr. Hoffmann said as of May 27. Council President Miller asked if that was before ground was broken. Mayor Birkner clarified it was after the award of bid but before the ground breaking.

Regarding Ordinance 10-4, Council President Miller stated there was a piece of that for contingency costs. He asked the percentage. Mr. Hoffmann explained that soft costs are 20%. Contingency could be 10%, or whatever number is adopted by the engineers. Councilmember Waneck said 8% was the engineer contingency. Council President Miller supposed that the Borough would then expect spend 8% less. Mr. Hoffmann said if that was the contingency, then yes. Council President Miller asked if there was an 8% contingency. Mr. Hoffmann said he did not have that in front of him, but the engineering estimate for the project shows that there was an 8% contingency. Councilmember Waneck stated that according to a Boswell 2/1/2010 memo there was an 8% contingency. Mayor Birkner asked if that was Boswell's engineering costs. Councilmember Waneck said the \$230,000 Boswell cost was listed after the contingency, but within that letter.

Mayor Birkner explained that the October 6 letter from Boswell is what has caused much confusion and concern. It has to do with \$123,000 of design charges described in a letter dated June 14, 2010 from Boswell Engineering, which was presented to the Governing Body at their June 15 public meeting. He further explained that this is an additional request that relates back to the June 19, 2008 proposal for fees for the project. That proposal was for engineering costs of \$69,700 for a project that was estimated to run \$400,000 - \$450,000. This was a scaled back version of the improvements seen today. The October 6 letter

contained documents from Boswell Engineering that included the March 29, 2010 letter detailing the scope of work for the current project, with a proposed engineering fee of \$230,000. At that time it was the Governing Body's understanding that Boswell's fees for the project would be \$230,000. Mayor Birkner continued that the project was bid based on the numbers from Boswell Engineering, which did not include the \$123,000. On February 26th, the Boswell AR status report showed a billing of \$19,860. On March 26th, there is a billing of \$55,505. On April 28th there is a billing of \$30,941. On May 14th there is a billing of \$10,485. On May 24th there is a billing of \$6,291. On May 27th there is a billing of \$468. At no time does Mayor Birkner recall a conversation with Boswell Engineering on additional design fees added to the total cost of the project. If it had been articulated then the costs would have been added to the original ordinance. The Borough did not find out about the additional design fees until June 14th, well after they were billed, so there was no resolution to tie into for payment of those bills. Mayor Birkner is unclear as to why that wasn't articulated to the Governing Body in February. Councilmember Waneck stated that it was in fact articulated in the opposite. She read from the February 2 work session minutes where Councilmember Grefrath asked if the cost for engineering was figured in. Dr. Boswell had replied that it was. Mayor Birkner reiterated that the Governing Body was under the belief that the \$230,000 was Boswell's fee. There were numerous times where Boswell was asked if this was all. Then on June 14th there was the letter for the additional \$123,000. Mayor Birkner said the \$123,000 may be for honest design services, not that he was implying dishonest services. He admitted the original amount of \$69,000 was for a smaller scope of design. At no time was the Governing Body approached or authorized additional expenses beyond the \$230,000. The Governing Body was led to believe the work was within the \$230,000 engineering scope. That is where the misunderstanding occurred. Mayor Birkner asked if any members disagreed.

Councilmember Phayre said they all had same reaction. Council President Miller said he thought \$230,000 was the final number. At no point did he think the scope changed. He doesn't recall any discussion to authorize additional charges. Mayor Birkner said the lighting plan, field grades, and irrigation was supposed to be paid for under the \$69,000 estimate of June 2008. The only thing he didn't in that estimate was drainage. He asked Boswell to explain the change in scope of work that wasn't accounted for.

James Kelly, Executive Vice President of Boswell Engineering, explained that Dr. Boswell was physically unable to be present. Mr. Kelly is very familiar with the operations of Boswell Engineering, but what he doesn't have is the two years of project history that Dr. Boswell has. Mayor Birkner interjected that the issue is laid out in the October 6th letter sent by Boswell. He understands there may be design changes but it was never discussed. Mr. Kelly said he can understand where there might be a misunderstanding. He said when Boswell Engineering was authorized on June 2008, the project was approximately \$500,000, with their fee approximately \$70,000. From that time until the bid, the job changed dramatically. The project went from a \$500,000 to a \$2.5 million project, which was a five fold change in the project. Mayor Birkner noted that there was a restroom, water, and a

number of things added. Mr. Kelly said it was a significant change. The design fee in June 2008 was for the \$500,000 scope of work, which was approximately \$70,000. The proposal letter said any changes in scope would be billed at the standard contract amount. Mr. Kelly stated that the change that took place over the course of two years was significant. He pointed out that the design fee increased 2.5 times for the fivefold increase in the project, which he asserted is consistent with all standards in the industry and is very appropriate. Mr. Kelly said as these changes were taking place, and were directed to take place, Boswell worked diligently in good faith to make them happen. They took the changes as authorization to proceed. Boswell performed the work and invoiced monthly as they have done throughout course of project. In May 2010, the Administrator and CFO were doing analysis and called Boswell. Mr. Kelly said he spoke to them himself as Boswell's contract administrator. He was involved in the June 14 letter, which he believes was presented to the Governing Body on June 15. Mr. Kelly met with the Administrator and CFO a week later. He was told there was no appropriation for this, which Boswell didn't understand to be the case. Mr. Kelly said he understood that it would have to be discussed by the Governing Body. After the October 5th meeting, Mr. Kelly worked with Jeff Morris on the October 6 letter to present clearly all the facts. He understands the misunderstanding. He hopes he has been helpful in explaining how Boswell Engineering has proceeded. He stands prepared to go through the details.

Council President Miller asked Mr. Kelly if he is saying that the fee should have been \$70,000 plus \$123,000? Mr. Kelly said in the June 14 letter it says Boswell had been paid \$60,943 of the design fee. Mayor Birkner said Boswell had been paid for what had been billed up to that date. Mr. Kelly said in terms of the June 2008 letter, in round numbers, Boswell had only been paid \$60,000 out of the \$70,000. Right now there is an outstanding balance of \$123,552. Approximately \$9,000 of that is part of the original June 2008 authorization. Council President Miller said the balance of \$110,000 is the result of the ordinance of this year. Mr. Kelly said that is correct.

Council President Miller said we are talking about \$110,000 and change for the project that evolved this year. Mr. Kelly agreed. Council President Miller asked if the Boswell fee should then have been \$230,000 plus \$110,000?

Mr. Kelly suggested setting aside the \$230,000 for moment. There are two elements to a project, the design and the construction. Total cost of the design phase is \$184,496 for the \$2.5 million project. Mr. Kelly explained that is 7.4%, which is standard for the industry. During the construction phase, the Borough wanted to be represented to inspect the contractors work, hold progress meetings, process requisitions, etc. That was the March 2010 proposal for \$230,000. Engineering inspection is typically approximately 10%.

Mayor Birkner said we understand difference between design and construction management. He said what was never articulated was additional design costs for the new project. In June 19, 2008 letter it does say will bill at hourly rates for changes. Mayor Birkner said with the magnitude of the changes, he feels it was irresponsible that discussion was not made between June 19, 2008 and February 2010 regarding the cost increase. Mayor

Birkner realizes that they were honest services. He is ticked off that it was never articulated by Boswell Engineering design changes were going to amount to \$123,000.

Councilmember Waneck said at the August meeting, after the CFO and Mr. Hoffmann had met with Boswell, Council President Miller asked Dr. Boswell if he had seen the analysis and where the Borough was in the process. Dr. Boswell deferred to Mr. Hoffmann.

Councilmember Waneck said they had asked Dr. Boswell over and over for additional costs. Why didn't Dr. Boswell say anything after the analysis? Councilmember Waneck asked if Mr. Hoffmann understood that the Borough owed that much money.

Mr. Hoffmann replied that at the August 3rd meeting the request for funding for the additional work was part of the discussion but was probably worded too diplomatically. Under the miscellaneous charges not paid, the Boswell design for \$116,795 was in there. Mr. Hoffmann said that was what we had thought was the additional funding request for the design. Councilmember Waneck asked if this was miscellaneous charges not paid, or was that charges not paid out of the \$230,000. Mr. Hoffmann said that was for the design, because the \$230,000 was already encumbered. This was the first time that the June 14 letter was discussed, after follow up analysis and review when the letter came in. Councilmember Waneck asked why the Governing Body was never told that this was going over.

Councilmember Grefrath said three weeks ago the Governing Body was teetering on whether to bring back the lighting or not. It was a big decision, everyone knew the Governing Body was making this big decision, and the Governing Body kept asking over and over again if everything was in place. Councilmember Grefrath said the Governing Body was hearing yes. Mayor Birkner said that was from March on. Councilmember Grefrath said three weeks ago the Governing Body finally said yes, because it had been taken off the table. Mayor Birkner explained that the lights were tied into the grant funding. When all of the grant funding came through it was the Governing Body's decision to go through with the entire project. Multiple conversations.

Council President Miller responded that the Governing Body was told with grant funding the Borough could do everything. It was the catalyst for going forward but was based on premise that the Borough was not in the negative in cash. Had the Governing Body known the \$123,000 was owed as well as the \$187,000 the Governing Body may have made different decision at that juncture. Mayor Birkner said it is his strong opinion that the \$187,000 should not be charged to the project, it should be charged outside the project. Councilmember Waneck said they had asked Mr. Hoffmann if the \$187,000 kept the Borough under the \$2.7 million, and he said yes. Councilmember Waneck believes the Governing Body would have made a different decision if the \$187,000 was above and beyond was agreed upon to spend. Councilmember Waneck read from the September 7th minutes pertaining to whether the \$187,000 was within the budget. Mayor Birkner clarified that the \$90,000 figure was given by Boswell on more than one occasion as the amount of the change order that would actually be used. Councilmember Waneck said the change order is now at \$187,000. Mayor Birkner said that is correct. Councilmember Phayre said it's actually \$184,000 at this point. Mayor Birkner said yes, while the Borough was assured it

would not be the full \$187,000 that didn't work out. Councilmember Waneck said the Governing Body assumed the \$187,000 was within the budget. Mayor Birkner said that it why it was agreed to just fund it immediately because we knew that the project had to go on. There was room within the expenses. Whether should be in or out of project is open for debate, but moving the project forward was the main concern and we knew we had the funds.

Council President Miller said everyone agrees it had to be done, but issue is the Governing Body was informed that the decision didn't have the consequence it currently has. The Governing Body was led to believe that the \$187,000 was within the \$2.7 million. Mayor Birkner interjected that it is what made it an easy decision to say go do it. Council President Miller continued that now the Governing Body is being told this is not true, the \$187,000 is not in the \$2.7 million, after they had asked repeatedly about it. At the last public session the Governing Body was told there was \$7,000 left and everything was done. \$300,000 is not even close to that. The issue is not whether the work by Boswell is appropriate, or whether the \$187,000 is appropriate. Council President Miller is debating that the information would have led to a different decision.

Mr. Hoffmann responded that at the August 3rd meeting, he and a member of the Governing Body had arrived independently at balance of \$47,627. What came up after that was the PSE&G bill for \$7,989, drainage for the dog run of \$10,000, fees related to the removal of garbage from Waste Management for tipping fees and dumpster fees, the rental of a sifter from a member of the community, plus the bill for the Rutgers soil analysis. Between the August 3rd meeting and September the bills that came in totaled \$39,722. When the question was asked if funds were left, the answer was yes, approximately \$7,905.

Councilmember Grefrath said on page one of the October 7 CFO analysis, it was mentioned that the Borough had encumbered \$76,000 from Ordinance 08-25. He asked when that was approved, since he didn't see it in the minutes. Mr. Hoffmann replied it was not approved by the Governing Body at a meeting, that it was done by the CFO in order to honor the obligations of the signed contract. Councilmember Waneck clarified that the Governing Body was never told that that it was added to the \$2.7 million until seeing this. Mr. Hoffmann was not sure. Council President Miller asked how the Governing Body would know if they didn't approve it. He asked if anyone told the Governing Body. Mr. Hoffmann didn't think so.

Mr. Hoffmann continued by saying that is how the \$7,905 was arrived at. Regarding the lighting, the Borough has an approved contract. Mayor Birkner said there were other funds moved out of the project cost not related to scope of the project such as monitoring fees.

At 8:13 pm the power to the recorder appeared to fail. A brief recess was declared while the Clerk rebooted the system. The meeting continued at 8:17 pm.

Mayor Birkner said decisions need to be made on the funding deficiencies. Councilmember Waneck asked for Mr. Hoffmann to keep a running total on the deficiencies.

Councilmember Quinn asked when the \$76,000 was moved over. Mr. Hoffmann said

when the contract was signed, which Councilmember Waneck assumed was February or March. Councilmember Quinn asked if it was for the lights. Mr. Hoffmann confirmed. Councilmember Waneck pointed out that the lights shouldn't have been ordered until August or September. Mayor Birkner explained that it was actually the September meeting when all the grants were in place. In August the concession stand and lights were held up. In September the \$825,000 was in place and able to be drawn on, and in fact was being drawn on. There was the question of holding off on the lights for the new softball and baseball fields, which totaled approximately \$172,000. The decision was no, the grant funding was received, and the project would move forward. Mayor Birkner said that as the Council President was careful to point out, the Governing Body had the understanding that the project was fully funded and within the original bond ordinance. The lights on the baseball and softball fields were the items that could possibly be left out if the project ran into a funding problem.

Councilmember Waneck said that at the August 3rd meeting Mr. Hoffmann had proposed using a number of old ordinances. The Governing Body had said they would not use those ordinances because it would increase price. Councilmember Waneck asked if other than Ordinance 08-25, was money from any other ordinances used. Mr. Hoffmann thinks not, but he will check. Mayor Birkner recalled that there was a question of an irrigation ordinance, and it was determined that the money was for Veteran's Park. Councilmember Waneck read from the minutes that Mr. Hoffmann had advised out of five ordinances there was a balance of 116,672.98. The Governing Body discussed the matter and decided not to use the money because it was a clever way to up the price tag and they would not do it. Councilmember Waneck thought perhaps the CFO did not know of the determination so she wants to make sure no other ordinances have been transferred to pay off any of the bills. Mr. Hoffmann will clarify. Mr. Hoffmann said what was also discussed in August was to move out the landfill monitoring costs. Councilmember Waneck said yes, excluding the landfill monitoring ordinance, she wants to make sure no other monies were transferred.

Mayor Birkner asked if there was a subtotal of \$15,698 in arrears at this point. "I looked at \$328,025. We got rid of the \$113,000 from the 2009-2010 monitoring. \$90,000 change order. \$97,000 surplus change order. Subtotal minus \$231,025. Then in a calculation is underfunded Green Acres Grant per contract, which we have submitted for payment to the 25%, to fund the full 25% of the project costs is \$123,460, bringing the subtotal in arrears now to \$107,565." He asked if that is correct. Mr. Hoffmann responded that the Green Acres part is correct. He believes the \$107,565 is correct and includes the full change order of \$187,000. Mayor Birkner asked for the balance of ordinance 10-9. Mr. Hoffmann said it is \$210.55. There is an irrigation ordinance of 07-13 which has \$91,656.72, for a total of \$91,867.27. Mayor Birkner asked for the subtotal in arrears above the original project estimate. Mr. Hoffmann said without the \$123,000, the Borough is \$201,486.50 in arrears, which includes the \$187,000 change order. Council President Miller asked what the number represents. Mr. Hoffmann said it represents the \$187,000 change order, an invoice for \$2,948.50 that should be moved to landfill monitoring, \$4,338 for the bike path investigation,

and \$7,200 for the capping verification. Councilmember Waneck asked if Mr. Hoffmann is taking numbers from the sheets that the CFO provided. She said the CFO includes bills from Burgis from 2008 which were used to do the grant, which she believes should not be charged against the project. She asked if Mr. Hoffmann was using the numbers from the budget transaction audit trail. Mr. Hoffmann said he is using numbers from the CFO analysis. He advised that some of the Burgis bills are part of soft costs. Councilmember Waneck said that should not be part of the \$2.7 million. The Green Acres 2008 grant application should not be applied against Ordinance 10-4. She thinks other miscellaneous bills should not be charged against the ordinance. Mayor Birkner said quite a few shouldn't be, including the \$187,000. Councilmember Waneck said no. Mayor Birkner said it should be determined what should be charged to the ordinance.

Councilmember Waneck said the Governing Body doesn't have all the information to tell, but she doesn't think Burgis bills should be paid out of Ordinance 10-4. Councilmember Waneck said she doesn't know what the Huntington Bailey charges are for. Mr. Hoffmann identified the Gluck Walrath bills as bonding costs. She identified the \$750 for Rutgers for the soil sampling. She asked if legal fees should come out of the general Borough legal fees. Mr. Hoffmann said if it is related to Westvale Park then they would be soft costs that come out of the ordinance. Councilmember Waneck specified that the ordinance covers work at Westvale, which is the infrastructure costs of Let It Grow and Boswell. Mr. Hoffmann advised there are also costs that are associated. They can be moved out but the Borough has to fund them. The Burgis bill was for help with the Green Acres application. If not applied to the bond then funding would have to be identified. Councilmember Waneck asked whether the Burgis fees were budgeted for in 2008. Mr. Hoffmann he will have to see. If that can be moved out it is a \$28,000 savings.

Council President Miller interjected that the exercise of looking at backing out hundreds of dollars here and there is going to take too much time. Councilmember Waneck said she is just trying to figure out where the CFO's numbers came from.

Mayor Birkner said the two big numbers are the \$123,000 of Boswell and the \$187,000, which are out of the scope of the project. He said the rest of the project has gone exceptionally well. The quality is good, the work and cooperation is unparalleled. All are working together, that is not the question. The question is how to pay for \$187,000 which was not included in the original scope of the contract, and how to pay for \$123,000 in engineering fees that Boswell is seeking even though they didn't tell us about it. The smaller questions the Governing Body would like to get an accounting for, but these are the big items. The spec was drafted very tightly with the knowledge that the Borough was not looking to spend a penny more than it needed to in order to get a quality project done. We know where the big overages are. Everything else is accounted for, from the pipe that was ordered to the amounts of sand, stone, bricks and mortar. Everything was accounted for, paid for and moving ahead exactly as engineered. The problem is where to pay the \$187,000 out of, and where and if the Borough is paying the \$123,000. There is the \$310,000. Councilmember Waneck said plus the \$76,438 transferred over.

Councilmember Waneck remembered that Dr. Boswell had said he over estimated on the quantities needed. For example, according to the breakdown Boswell estimated five sewer manholes would be installed, and only two actually have been. What are the savings? Mr. Kelly said they don't have the final accounting yet. Typically at the end there is the final zeroing out of the project. He does not think the savings will be in the magnitude of hundreds of thousands of dollars.

Councilmember Quinn asked if there will be any more soft costs that the Borough is aware of. Mr. Kelly said that as he sits there tonight it is his belief there will be no more costs from Boswell. Councilmember Waneck asked which of the bills out of \$296,976 in Boswell bills should not have been included. Mayor Birkner questioned if that amount included the 2008 \$60,000? Councilmember Waneck said it doesn't seem to be included, since these bills are all from 2010. Mayor Birkner said according to Boswell records, those bills were paid as recently as 1/29/10. This included a bill for \$902. Councilmember Waneck asked whether the bill on the bottom of page 1 of the Budget Account Status for \$99,419 was open or paid. Mr. Hoffmann said it's open because there is no check number next to it. Council President Miller requested the definition of open. Mr. Hoffmann said the bill has been received, and the finance office has not identified an ordinance or budget line to encumber against. Council President Miller said it is open and they need to identify a source. Mr. Hoffmann agreed. Councilmember Phayre mentioned it was open since 5/28.

Council President Miller asked Mr. Hoffmann if the \$296,976 is for open invoices for Boswell. Councilmember Waneck explained that she had added up all the Boswell invoices in the memo from Mr. Herr dated October 7.

Mr. Fordham said these charges are for several different jobs. For example, WW469 is for the grant application, which is separate from what is being discussed as additional and separate from the \$230,000. Bills labeled WW546 are construction inspection and go against the \$230,000. Councilmember Waneck said goes back to the question of what really should be charged against the ordinance. Councilmember Waneck asked what 498 and 496 are. Mr. Fordham said WW496 is gas monitoring. Mr. Senkevich said WW498 is the survey and subdivision. Councilmember Waneck said the CFO needs to clean up the accounting of charges. Mayor Birkner stated that he had asked specifically and directly for charges only related to this project. They are on there but not broken out. Councilmember Waneck said it gives a wrong impression of what was spent. Mayor Birkner said it was a one sentence request for every bill for the Westvale Park project, not grant monitoring or grant applications from 2008, not for anything else. Just what was applied to the bond ordinance. He had requested it for Friday but the CFO was going on vacation. Councilmember Waneck said all were in agreement that they would have liked the numbers for this night. The Governing Body called a special meeting and are sitting here without answers. Mayor Birkner replied that it is the reason the special meeting was moved from last Thursday to tonight. Obviously one can't control a medical emergency, but the information should have been here already.

Mayor Birkner reiterated that the Borough is at the end stage of the construction project.

The Governing Body wanted to make sure that every last dollar was identified and accounted for. He noted that there are items that should not be included as Councilmember Waneck pointed out. The Governing Body had a clear understanding of what was spent and exactly what it was spent on. Everything was tight in the engineering and bid process, and everything was tight in the bids received. For the low bidder to come in at such a number, and the Borough to be right up against it at the end of the project is remarkable. Mayor Birkner continued that again it comes down to two big numbers, the \$187,000 and \$123,000. There are other issues with regards to the park on how it is going to be completed correctly. The contractor is in attendance for reviewing scheduling deadlines, what is left to be done, what issues are left to encounter in the last weeks of the project. Mayor Birkner wants to verify with the engineer exactly how the project is going, what needed to be done and their recommendations to get it done properly.

Council President Miller said there is still a deficit of \$347,000 that must be dealt with before going forward with anything else. He is not able to make conscious, intelligent decision on anything more if the project is \$350,000 over what was planned. Mayor Birkner said out of the \$350,000 we have identified the \$187,000 and the \$123,000. Councilmember Waneck added \$76,438. Mayor Birkner and Council President Miller agreed to deal with just the two numbers. Council President Miller asked how to cover that. Mayor Birkner said that is the big question. Council President Miller asked the Administrator for suggestions.

Mr. Hoffmann said there are two options. The Governing Body can look at the costs and say they legitimate and pay them. A bond ordinance can be done, which can be broken down into costs related to the landfill if they are not related to recreation. Another option is to take a look at what work can be removed. Council President Miller asked what can be taken out and if there is \$300,000 of work that does not need to be done. Councilmember Waneck said that is something for the engineer. Council President Miller asked if Mr. Hoffmann is aware of anything that has not been started that adds up to the cost. Mr. Hoffmann is not. Councilmember Grefrath asked for the engineer to comment.

Mr. Kelly said short of stopping the project altogether, nothing comes to mind. It would have to be discussed in house. He asked Jim Fordham for input. Mr. Fordham said lights for the baseball and softball field would be \$172,000. Mayor Birkner said correct but the equipment had been ordered so there would be costs to the Borough for restocking fee. Even if delayed the costs would have to be encumbered in the future. Councilmember Waneck asked what the restocking fees would be. Mr. Fordham was not sure, but thinks roughly 15% if ordered and shipped. Mayor Birkner said if ordered and not shipped? Mr. Fordham is not sure.

Paul Imbarrato, CEO of Let It Grow, explained that originally the base contract had lights. In August he was told to hold off on the lights, at that time they were ordered. He slowed down the production, then reordered them in August. The restocking fee is upwards of \$60-65,000 which will equal about 15-18% cost. Some of the work has been done already for that, the engineering, the lights, the wires. They are ready to be installed. Mayor Birkner asked when Mr. Imbarrato anticipates receipt of lights. Mr. Imbarrato said the lights that

were pushed back will be received in about 5 weeks. Mayor Birkner asked about the whole project. Mr. Imbarrato said lights would be received over the next 3-6 weeks, but those particular lights are the final part. Councilmember Waneck said when Mr. Fordham said \$172,000 for lights, there are actually additional lights, not just the baseball and softball. She asked if they were ordered at different times. Mr. Imbarrato explained that the lighting encompasses the original baseball field, the soccer field, football field, the new baseball and softball fields. The lights in question are the ones for the baseball and softball field closest to DPW. Mayor Birkner clarified that the original baseball field is really the original softball field identified as Westvale B. Mr. Imbarrato said it is going to be an expensive option for the Borough to stop the lights. Much of the \$172,000 has been spent. Fixtures are \$80-\$90,000 of the \$172,000. There is also wire, boxes etc. Councilmember Quinn asked if football and soccer field lights are already received. Mr. Imbarrato said they are being manufactured. The soccer lights are coming first. Councilmember Waneck pointed out that the bid was for the infrastructure as one item, with the lights themselves as an option. She specified that the discussion is the lights themselves for the four fields are in the \$600,000 range. Mayor Birkner said it is 15% of \$172,000. Councilmember Waneck asked why it is only \$172,000. Mayor Birkner replied that that is what was identified as the last phase that the Borough could stop work and not finish. Councilmember Waneck stated that there are physically no lights at this time and asked Mr. Imbarrato to confirm. He said yes. Mayor Birkner questioned whether preparations have been made above just the normal light posts and infrastructure. Mr. Imbarrato said yes. He explained that it included footings, the wires, the conduit, the boxes, and other items. Councilmember Waneck stressed that that was always separate. Mayor Birkner stated that the concrete footings for the light posts and the conduit leading up to it were separate. The rest of the components of the lights such as control cabinets were all part of the light order. Mr. Imbarrato reminded that project got off to a slow start with the ground breaking on June 15. He had all intentions of finishing the project on October 15. There were some underground issues with drainage, garbage and clay. The project is close to finishing, so backstepping with lights would be problematic. He appreciates the issue of budgets. Mr. Imbarrato said the project is moving along and he is doing his job. Material is coming. Councilmember Phayre said the Governing Body was given the impression the project was financially ready to move forward. Mr. Imbarrato said he's hustling. Councilmember Waneck recalled requesting at a previous meeting that the Governing Body not be boxed into a corner on decisions.

Councilmember Phayre asked about any other potential problems. Mr. Imbarrato said if the Governing Body wanted to get into any savings, there are small line items. Let It Grow presented the idea of using on site topsoil, which was originally a \$50,000 savings but the increase in the depth of the topsoil resulting in about a \$12,000 credit. He is still waiting to get that going, since details need to be worked out. Mayor Birkner clarified the \$12,500 credit. The original estimate was for a credit of approximately \$42,000. This was changed because the design of the field topsoil depth changed midstream from 4 to 7 inches. This required bringing in more soil which increased cost and cut into the credit. The Borough will

still receive a credit but that is why the credit number is down.

Councilmember Waneck asked if Mr. Imbarrato felt he was over or under the quantities proposed by Boswell. Mr. Imbarrato said Boswell and Let It Grow go back many years. He said that the first thing his estimator does is review the quantities on the proposal form. In this case some were right on, some were a little over. There has to be some leeway because things always come up. There has to be a vehicle to allow for adjustment. He feels Boswell is doing the right job for the town.

Council President Miller asked if there is anything else that the Governing Body should be mindful of that might not be pleasing. Mr. Imbarrato said the project is pretty much at its last stages. He is looking now to give change orders with no cost but a better product for units that are left, such as stamped asphalt around the building. He can combine item I14 with a small amount of money left with the unit costs of the asphalt to get concrete which will result in a superior patio around the entire building. This is a zero change. He is working on paving the path as opposed to taking certain sections out. Mr. Imbarrato said a lot of things from the design have changed somewhat regarding the asphalt path that is there so he working to get asphalt on the entire path instead of 60% but zero cost. Then there is the sod issue which requires attention. Mr. Imbarrato said he has the full intention of doing what they said they would do last week, which is seeding the soccer field, and a large portion of the exterior parts of the football field. They are looking to seed the softball field, and touch up the field that was driven on. The dog run is growing well. Mayor Birkner said the seed washed out. He is concerned about that.

Councilmember Phayre said all bidders bid on seeding the project. Is there a long term benefit to investing in sod now? Five years from now, how would that benefit the Borough? Mr. Imbarrato explained that with sod there is a more durable playing surface. With seed the Borough will have to reseed in the spring, early August, and after football season. Seed is more of a temperamental growth that will not endure the challenges of a sports facility. The original intent was not to allow play on the fields until after June of next year. Mayor Birkner interjected August 1. Mr. Imbarrato continued that while it is a workable, great thought process, unfortunately underground issues pushed the project back. Oct 15 is the end of the best seeding time. With the process they are seeding they will be going over and above what the specifications reads but it is entering the window that will not allow for good germination. Mr. Imbarrato has built complexes all over New Jersey and Connecticut. Any type of complex that was sustainable he has sodded. Councilmember Phayre said the concern is that the Governing Body never heard of sod as a possible substitution for the original planned process. Even in the beginning nobody suggested that as an option. Mayor Birkner said it has always been out there as something to discuss. It had never been acted on, and never thought of as something really important because we were within the time frame. The project was delayed because of bidding procedure questions, which cost about 6 weeks. Mayor Birkner was not sure of how much time was lost on the job site because of elevation deficiencies, and the piercing of the cap. That was the point where everything stopped to deal with the issue at hand. Mr. Imbarrato agreed. Mayor Birkner continued that there was

then significant rain. Mr. Imbarrato estimated that the project lost 5 weeks to litigation, another 5 to the change order, plus a week to rain, so 11 weeks. Originally Let It Grow felt comfortable starting the seeding process by August 15. Councilmember Phayre asked with sod what changes for the access to field timeline wise. Mr. Imbarrato said there would be playing for spring if the sod is down in the next 2-3 weeks.

Councilmember Sciara arrived 9:16 pm.

Councilmember Waneck pointed out that was never the timeline. Mr. Imbarrato responded that he was merely answering the question. Regarding seed, Mr. Imbarrato said it will all depend on how much seed gets down in the next two weeks, the severity of the winter, spring rain and erosion. Maintenance is key. Council President Miller asked if choosing between sod or maintenance, what would he chose. Mr. Imbarrato said sod. Council President Miller asked if sod required maintenance. Mr. Imbarrato said it does, he was just answering the question. He would sod the fields and educate the DPW on turf management, which they already do really well.

Mr. Hoffmann asked if sod is put down would it require special equipment. Mr. Imbarrato said it needs to be maintained with a lighter weight mower or tractor. Mr. Hoffmann said what would need to be purchased. Mr. Imbarrato said Let It Grow has a small division that maintains lawns and uses 2 or 3 52 inch lawnmowers that catch the grass. Councilmember Quinn said that would be for seed or sod. Mr. Imbarrato said yes.

Council President Miller asked what type of seed would be used, it is rye seed. Mr. Imbarrato said a blue grass mixture. They submitted a more cold weather seed mixture a few weeks ago because they are getting out of the seed time frame and soil temperatures are getting colder.

Mr. Imbarrato said some paint colors need to be chosen. Mayor Birkner said the committee will do it on Wednesday.

Mayor Birkner asked for questions. Councilmember Phayre asked for Mr. Hoffmann to elaborate on the Green Acres funding. Mr. Hoffmann said the Borough will be receiving a \$500,000 Green Acres reimbursement grant. A check for \$159,000 will be received soon based on invoices submitted. Based on the contract with Let It Grow, the County and the Borough are entitled to 25% of the contract costs for grant funding, which is a total of \$623,460.50. The Borough has applied for the additional \$123,460, which is under review at Green Acres right now. That will take another 6 weeks before signoff. When the change order is reviewed the Borough may be in a position to apply for additional grant funding, since the change order could be considered as part of the contract. Mayor Birkner clarified that the grant is for 25% of the total contract, which is why the additional funding will be applied for. Councilmember Phayre requested the actual costs to stop the lights. Mr. Hoffmann said 15% of \$172,000 is \$25,800, it wasn't \$60,000. Council President Miller said it's closer to 30%. Councilmember Phayre reiterated that the grant covers 25% of the

total project cost whether the project is under or over. Council President Miller asked whether taking out the \$187,000 would reduce what the Borough was eligible for. Mr. Hoffmann said yes. Mayor Birkner replied that the \$187,000 should not be applied to the ordinance. Council President Miller clarified that he was asking if the \$187,000 was removed from the total would it result in the Borough being eligible for less. Mr. Hoffmann explained that the Borough is eligible for 25% of the total project cost paid to Let It Grow. Mayor Birkner realized that he was thinking of something different, that Council President Miller was referring to submitting the \$187,000 as part of the total project cost to receive 25% grand funding for it.

Councilmember Waneck asked when the \$187,000 was no longer accounted for. Mr. Hoffmann said sometime after August 3rd. At that meeting the change order was discussed, it was indicated that approximately \$90,000 would be used. Then other items were found at the park and the remainder of the change order was used sometime afterwards. Councilmember Waneck said so when the Borough ordered lights it lost the ability to pay for the \$187,000. Council President Miller said that is what he understood. He asked how it was determined that \$7,000 remained in the ordinance at the last public session. Mr. Hoffmann explained he was working off the \$47,627 from the August 3rd work session. Out of that there was the PSE&G bill of \$7,989, the dog run drainage of approximately \$10,000, a soil sifter for \$5,000, Waste Management bills of \$16,084.50, and the Rutgers soil bill of \$648.50. Councilmember Waneck thought the Waste Management and Rutgers bills were part of the \$187,000 change order. Mr. Hoffmann said it was, he included it. He said the Council President was asking how he arrived at the \$7,905 number. Councilmember Waneck asked how he was accounting for the \$186,701 which is supposed to include that bill, and then he added that bill again. Mr. Hoffmann replied that at the time, he didn't add the bill again, because at the time we were only going to be using \$90,000 out of the change order. Councilmember Waneck said which still would have included the Waste Management. Mr. Hoffmann said he wasn't sure of that.

Council President Miller said it was known the worst case was \$187,000. Mr. Hoffmann thought it might be \$90,000. Mr. Hoffmann said yes. Council President Miller continued that Mr. Hoffmann gave the Governing Body the figure reflecting \$90,000 when that was not a certainty as opposed to \$187,000 which we were told was the worst case. Mr. Hoffmann said no, at the August 3rd meeting the conclusion was reached that there was \$47,627 available. After that August 3rd meeting, additional expenses came in between the August 3rd meeting and the September meetings. The known bills that came in were \$39,722, and they were verified. Council President Miller asked if the \$47,000 included the \$90,000 or the \$187,000. Mr. Hoffmann said it included the \$90,000. Council President Miller asked if it was the practice to take a projected number or worst case number? He asked Mr. Hoffmann why he didn't use the worst case number. Mr. Hoffmann said initially he did use the worst case number, but the Borough Engineer at that meeting said we would need to use \$90,000 and the remainder from the change order would be available for other things. Council President Miller emphasized that it was consistently discussed as \$187,000

and the Governing Body always asked if the \$187,000 was factored in. He asked why Mr. Hoffmann was saying yes to \$187,000 and intellectually applying \$90,000. Council President Miller said \$90,000 did not appear anywhere else that he could see. He continued that Mr. Hoffmann was thinking \$90,000 because it could be. The Council was of the understanding that it could be \$187,000 so the Borough should be preparing for the worst case, and if it came out less, good. Now it's closer to the worst case. Mayor Birkner said it is the worst case. Council President Miller agreed it's over \$187,000. The numbers seem to be fuzzy. It's not any accounting that he's ever been accustomed to. If there is an expense that could be \$187,000 the books are done reflecting that, until it's finally resolved. For the Governing Body to make decisions thinking it's been covered is frustrating.

Mr. Hoffmann referred to the memo dated July 29, 2010. On the last page on the last column under Exhibit A is Miscellaneous Charges Not Paid. There appears the full change order of \$187,000. That was what was given to the Governing Body for review at that meeting, with the Total Miscellaneous Charges Not Paid of \$465,933. Council President Miller asked how the \$47,000 was arrived at not using the \$187,000. Mr. Hoffmann replied that during the discussion at the August 3rd meeting the Borough Engineer discussed the fact that we would not need the whole change order. We also moved out \$113,102 which was for the landfill monitoring for 2009-2010. So based on moving the landfill monitoring items to their proper location, as well as receiving the recommendation or suggestion that we would not need the full \$187,000 because at that time it looked like everything was going to be clear, the analysis was conducted right at that meeting where we came up with a balance of \$47,627. Council President Miller asked if at that point we knew about the \$123,000. Mr. Hoffmann said yes. Council President Miller asked where the \$123,000 was reflected in the \$47,000. Mr. Hoffmann replied it's listed under Exhibit A under Boswell Design for \$116,795. Council President Miller said at that point we were not \$47,000 under, we were over budget. Mr. Hoffmann responded no. Others responded yes. Council President Miller continued that if there was a pending bill for \$116,000, and cash in hand is \$47,000, then the Borough is not \$47,000 to the good. Mr. Hoffmann looked at the information and said at that night the Borough was \$47,627 in the black because the \$123,460 of additional grant money requested was applied. Councilmember Waneck said that did not include all the bills the Borough was aware. Mr. Hoffmann stated it included all the bills that we were aware of that night. Council President Miller countered that it did not include the \$123,000. Councilmember Waneck added that it did not include the \$8,000 PSE&G bill. Mr. Hoffmann pointed out that we were unaware of that bill that night. Council President Miller reiterated that we were aware of the Boswell bill. Mr. Hoffmann said the Boswell bill was included in there at \$116,795. Council President Miller said \$123,116. Councilmember Waneck surmised that the PSE&G bill was paid in September but we were aware of it in August. Mr. Hoffmann responded that it didn't come to his attention until after that meeting. Council President Miller reiterated that if in a balance sheet you say you're to the good 'x' dollars, and you have known expenses, that 'x' is not an accurate number. In this case the Governing Body was told \$47,000, there was an awareness of \$116,000, therefore the project

at that point was in the red. At that point we were not where we thought we were. Council President Miller stated that if the Governing Body members had known, they might have made different decisions. He is frustrated by trying to get arms around the numbers. It is hard to visualize unless it is put in writing and specific questions can be asked. Council President Miller calculated that the current deficit is \$347,000. There are limited options, and all the options available are distasteful. Had the Governing Body been told earlier, more options would have been available. Council President Miller relayed his displeasure.

Mr. Huntington interjected that the one action that the Governing Body might find appropriate to take this evening, if not happily, is to start the process to initiate the creation of a bonding ordinance for the additional expenditures. It does not obligate the Governing Body to spend the money, nor does it spend the money. It gives the Governing Body the means to expend that money if it chooses to do so. It is a decision that distasteful as it may be at least allows the Governing Body to position itself to take whatever steps it eventually chooses to take. It doesn't mean the borough is paying any of the costs if it chooses not to, or must pay them. It just gives the Governing Body the means to do so if it comes to that. Mr. Huntington said he recognizes what an unpopular recommendation it is, but it is one that the circumstances present. Councilmember Quinn asked how to know what number to pick if the Governing Body is unsure of the numbers. Mayor Birkner said that is a good question. Mr. Huntington explained that the number for the bond wouldn't be chosen this evening. If the Governing Body were to follow the recommendation then between now and the next meeting Mr. Hoffmann, Mr. Herr, Bond Counsel and whoever else needs to be part of the discussion comes up with a determination for an amount that would be a supplemental bond ordinance for the project that could be considered for adoption. Mr. Huntington expounded that a bond ordinance does not have to be spent, and many times there is money left over. He is concerned that if some step isn't done to create the ability to expend money that the Governing Body may find itself handcuffed later and asking come December why no one said this last October. Councilmember Waneck stated that the Governing Body is handcuffed now, and she has no confidence in the numbers that have been presented. Council President Miller said the Mayor appropriately asked for a detailed account, which the Council supported. It was not received. The Governing Body had the expectation that every financial question answered with no "I need to get back to you". That phrase was heard at least four times tonight. The Mayor asked clearly to have the information in front of the Governing Body tonight in order to make an informed decision. He asked for it last week, with the Council's support. It was the right thing to request, it is the only way to make intelligent decisions. The amount is not pennies. Council President Miller stated his disappointment that the information requested was not available. Councilmember Waneck pointed out that the information on the 8% contingency was not provided either.

Mayor Birkner voiced his disappointment. The three big punch list items totaling \$328,000, and that's minus the \$37,000 however clearly or fuzzy you want to account for it, the soft costs. He looks at the project as being solvent in its entirety and done right with a total of \$382,000 short. Considering that the project is being built on a landfill, Mayor

Birkner expects certain overages, which the project ran into with the \$187,000, given what is being built on and what was there before. He does not want to point fingers at the Engineering company in the design or the construction company, it is irrelevant. The fact is there would have been some overage, and the Governing Body would have understood. To be \$382,000 off is a big number compared to the overall project. It's a great project that is going along wonderfully. The engineering and construction is going along terrifically. The financing because of a couple of unexpected items is a problem. So the Governing Body does have to make a decision on what to do about those things, whether it be a temporary stop gap, initiating what Mr. Huntington has suggested without having an obligation at this point until next Tuesday's meeting when the Governing Body does get the actual real accounting. Mayor Birkner said he is tired of the delays, tired of saying 'next week', tired of not having an accurate account of where the project is financially. The Borough knows exactly where the project in regards to construction because of the weekly construction meetings. The Borough knows exactly how much time was lost because of variables beyond the control of the engineer, Governing Body or contractor. Those things are identifiable and quantifiable. What's frustrating is the \$382,000 could not be identified or quantified. Mayor Birkner rephrased and said it was able to be identified and quantified with a ball park figure, but the exact numbers are not present tonight. He offers no excuse for that. Council President Miller said none is necessary. The engineer, contractor and everyone involved in construction has done a wonderful job. There is a very significant financial responsibility to address. The responsibility to know what is being spent, why and how is held in the highest regard by the Council. Council President Miller continued that the Governing Body asked a basic, simple question, which is how much is in contingency that the contract and ordinance provided. That should be a given answer, and that could be a big piece of this. Eight percent is a significant piece, yet there is no answer to whether it's eight percent. Where is the money, where did it get spent. It is not a gotcha question, it is an obvious question. The only way to manage the project is to know all the numbers. Eight percent of the project is a significant number, and the Governing Body was told "we don't have an answer." The Governing Body needs answers, and should have them tonight.

Mayor Birkner emphasized that he wants to look at the bigger scope. He does not want to get mired in the smaller numbers, which the Governing Body does need to get a hold of, but that is really what the comments are directed at, those smaller numbers. There is still the bigger number, the \$382,000, that is very problematic and requires a hard decision. Councilmember Waneck suggested the engineer recommend what can be cut back at this point. Councilmember Phayre asked if Green Acres money can be counted on to apply to the overrun. He noted there are many variables for the Governing Body to look at, such as what costs would be incurred to stop parts of the project at this time, if anything can even be stopped. Councilmember Waneck said while she realizes at the end of the project quantities zero out, she would like to get a feel right now as to where things stand. Mayor Birkner said that was supposed to happen tonight. Mr. Kelly said he is uncomfortable suggesting that any large number is going to be available. Councilmember Waneck said she didn't care if it was

large or small, she would like the numbers. Mr. Kelly said he will get back to the Governing Body. As the contractor indicated, he doesn't see anything significant, nor does Boswell, but they will have a firm number for the Wednesday progress meeting. Councilmember Waneck questioned when PSE&G started charging for their work. That may be something that can be pursued with PSE&G. Councilmember Phayre asked for a copy of the bill, which Councilmember Waneck said she had requested but it was not available. Mayor Birkner said it was just not here at hand, it was in the finance office. Councilmember Waneck would like to ask the BPU about the charges. She is happy to nickel and dime such things.

Mayor Birkner asked for comment on Mr. Huntington's suggestion one way or the other. The Borough is backed against the wall, where the project will stop unless the Borough proceeds with Mr. Huntington's suggestion with the knowledge that it's something that the Governing Body doesn't have to do. Council President Miller asked why the project would stop. Mayor Birkner said because the Borough doesn't have the money to pay for the whole project. Council President Miller asked if the decision could be made next Tuesday at the public meeting. Councilmember Waneck asked if there would be more accurate numbers by then. Councilmember Phayre said he did not want to make a decision with the current numbers. Council President Miller agreed with Councilmember Waneck that it would be good to have a better feel for the numbers and understand the magnitude of the decision. He did not sense any interest in putting forth another ordinance until there is confidence in the numbers.

Mayor Birkner observed that the Governing Body spent over two hours going around in circles. He apologized to the members of the public present who expected concrete answers for the finalization of the project to move forward. He noted that it was data and numbers the Governing Body should have had. He mused whether the meeting should have been held a day later rather than on the holiday so employees responsible for the financials who were on vacation could have been present. Things could have been done differently, but the fact was the Governing Body fully expected to have the information tonight. The project is moving forward but the Governing Body has to figure out how to deal with the unanticipated overages. Mayor Birkner stressed that they are unanticipated overages, it is not anything that anybody did.

Councilmember Quinn asked if the contractor would move forward and there would be no additional expenses incurred that are not anticipated. Mayor Birkner said the contractor is moving forward as per the contract. There is a decision to be made whether there will be adverse consequence to continue in that manner. Councilmember Quinn supposed the decision would be made next Tuesday. Mayor Birkner replied it would be the Governing Body's decision. Councilmember Quinn asked if until then the contractor will go ahead. Mayor Birkner said the project is progressing, work is continuing on the existing soil, concession stand, electrical conduits, the pathways, and the components of the park every day. There are several issues out there with moving the design of the lighting overlay on the field design where they don't match up. Some of the electrical components have to be moved, which will be done in the next weeks. They are proceeding with the projects as

intended. The Governing Body has to decide on the end use of the project. He surmised that Councilmember Quinn's question was leading to the seed vs. sod issue. Councilmember Quinn said before next Tuesday the contractor will have to seed from the soccer to the multipurpose to the softball fields. Mayor Birkner replied that the soil must be down first. In the meantime there are other components that have to be done in unison with putting down the soil. They can't get it all done within the next six working days before the next meeting. He noted the contractor has been working on Saturdays to make up some of the lost time. Mayor Birkner expects to have a better handle on the project status at Wednesday's construction meeting.

Councilmember Grefrath commented that the borrowed soil would be a finite amount. Mayor Birkner agreed. He said there are additional quantities to be brought in from off site regardless of seed vs. sod.

5. Agenda/Public Forum

Motion to open the Agenda/Public Forum: Councilmember Phayre

Second: Council President Miller

Voice Vote: A voice vote was taken with all present voting in the Affirmative

Al Oelkers, 519 Fairview Avenue – expressed his disappointment that the finances weren't put together tonight, and that Mr. Herr and Dr. Boswell were not present to answer questions. Mayor Birkner explained that Dr. Boswell has been ill, but he is pleased that Boswell representatives are in attendance. Mr. Oelkers referred to an incident many years ago where a bulldozer had sunk into the landfill. He insisted the landfill is not fully settled, and asked how the sod would be affected if settling occurred. Mayor Birkner responded that the landfill has been capped and settling for five years. He questioned Mr. Oelkers on the date of the occurrence he referred to. Mr. Oelkers said it was before the landfill was capped. Mayor Birkner noted that the contractors have been driving heavy equipment all over the landfill and nothing sunk. The integrity of the project is not the question. The advancement of the project is because of the funding overruns. The scope of the project is not in question, how it is getting done is not an issue, it is working wonderfully. Mayor Birkner emphasized that the reason for the meeting tonight is because the project is almost finished, so the Governing Body wanted to get a good handle on every expenditure that was made. Mr. Oelkers asked when the financial information will be available. Mayor Birkner said at the public meeting, although the Governing Body will have it sooner.

Mr. Hoffmann announced that a member of Mr. Herr's family had surgery tonight. Mr. Hoffmann stated he himself is responsible that numbers are not available. Mayor Birkner said he would take the responsibility.

Michael Gallo, 16 Maple Avenue – commented that idea of ever running for Council vaporized in the past two hours. Mr. Gallo believes the problems have been passed down

over the years with the landfill. He noted that there are overages in every project. He feels it is not a significant amount of overage on a \$2.7 million project. He is anxious for fields to be ready as a sports person, as are all the sports organizations. As taxpayer, he is concerned with the bills for which there is no understanding, and the cap issues. It is clear that there are big decisions to be made, but he stressed that the Governing Body is building a legacy of a park to be utilized and that should be foremost, as opposed to coming up with money from this source or that source. Mr. Gallo noted everyone wants to see the park completed, and no one wants taxes raised. The project is nearing completion, and everything discussed tonight can be easily achieved. These are not easy decisions, but there doesn't seem to be a lot of choices. Mr. Gallo urged the Governing Body to keep the bigger picture in mind. He suggested that the Borough shouldn't hesitate to come to the sports organization with expenses that may need covering.

Mayor Birkner said there is no question that the project wouldn't be so far along if it wasn't for the recreation organizations effort and determination to see the project completed. The sports organizations have been waiting a long time, and endured sub standard dangerous conditions. Mayor Birkner commented that the right decision is not always the easy decision, and it is a hard decision ahead of the Governing Body. All will work collectively to come up with the right decision. Mayor Birkner appreciated Mr. Gallo's support.

Councilmember Phayre said to Mike Gallo that the enthusiasm from the groundbreaking hasn't changed, it is still at the same level. The Governing Body is requiring accountability from those who dropped the ball.

Michael Goldberg, 38 Fifth Street – supports the project, but have to consider those on fixed income and pensions. An extra \$350,000 raises taxes. Mayor Birkner said the Governing Body has been diligent with the accounting, and costs have been scrutinized to the dollar. He is speaking for the Council when saying that without question the first concern has been for the taxpayer. The goal is to do the project in the most cost effective and cost efficient manner possible. The Borough has been successful with grants so that 30% of the cost is offset by grants. The project wouldn't be happening if it weren't for that. It is not an easy decision to spend \$2.7 million, but it is a good deal and beneficial for the Borough. No one on the dais wants to see taxes go up.

Motion to close the public hearing: Councilmember Phayre

Second: Council President Miller

Voice Vote: A voice vote was taken with all present voting in the affirmative.

6. Adjournment

Motion to adjourn: Councilmember Sciara

Second: Councilmember Miller

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Special Meeting of the Mayor and Council
October 11, 2010

Voice Vote: A voice vote was taken with all present voting in the affirmative.
The time was 10:15 pm.

Attest:
(signed) Karen Hughes

Karen Hughes, RMC, Borough Clerk

Proofed by: Denise Holmes, Deputy Clerk