

REGULAR MEETING – DECEMBER 12, 2011 – 7:30 P.M.

Pledge of Allegiance.

Roll Call: Commissioner McGovern, Commissioner Gorman, Mayor Mahon

Borough Clerk reads the following statement:

This is a regular meeting of the Board of Commissioners of the Borough of Avon-By-The-Sea and notice of time, date and place has been transmitted to the area newspapers, Avon Board of Education, Avon Public Library and the Avon Post Office in compliance with the rules and regulations of the Open Public Meetings Law.

Fire Exits are located in the directions I am indicating. In case of fire, you will be notified by an alarm bell. If so notified, please move in a calm, orderly manner to the nearest smoke free exit. Thank you.

Motion by McGovern seconded by Gorman that the minutes of the meeting of November 28, 2011 be approved as written.

The Vote:

Aye: All

No: None

RESOLUTION offered by McGovern seconded by Mahon that,

ORDINANCE NO. 10-2011 entitled:

“ AN ORDINANCE AMENDING AND SUPPLEMENTING THE CODE OF THE BOROUGH OF AVON-BY-THE-SEA, CHAPTER 120, ENTITLED “MUNICIPAL BUILDING USE FEES”.

be introduced on first reading.

The Vote:

Aye: All

No: None

Motion by McGovern seconded by Gorman that the above Ordinance No. 10-2011 be taken up on second reading with a hearing on January 9, 2012 at 7:30 p.m. in the Municipal Building.

The Vote:

Aye: All

No: None

RESOLUTION offered by McGovern seconded by Gorman that,

BOND ORDINANCE NO. 11-2011 entitled:

“ BOND ORDINANCE PROVIDING FOR VARIOUS CAPITAL WATER IMPROVEMENTS OF THE BOROUGH OF AVON-BY-THE-SEA, MONMOUTH COUNTY, NEW JERSEY, APPROPRIATING THE AGGREGATE AMOUNT OF \$200,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$190,000 BONDS OR NOTES OF THE BOROUGH TO FINANCE PART OF THE COST THEREOF.”

be introduced on first reading.

The Vote:

Aye: All No: None

Motion by McGovern seconded by Gorman that the above Ordinance No. 11-2011 be taken up on second reading with a hearing on January 9, 2012 at 7:30 p.m. in the Municipal Building.

The Vote:

Aye: All

No: None

RESOLUTION offered by Mahon seconded by McGovern that,

ORDINANCE NO. 12-2011 entitled:

“ AN ORDINANCE AMENDING AND SUPPLEMENTING THE CODE OF THE BOROUGH OF AVON-BY-THE-SEA, CHAPTER 113, ENTITLED “LAND DEVELOPMENT.”

be introduced on first reading.

The Vote:

Aye: All

No: None

Motion by McGovern seconded by Gorman that the above Ordinance No. 12-2011 be taken up on second reading with a hearing on January 9, 2012 at 7:30 p.m. in the Municipal Building.

The Vote:

Aye: All

No: None

RESOLUTION offered by McGovern seconded by Mahon that,

WHEREAS, properties reflect 2011 tax and water/sewer balances and credit balances of less than \$10.00, and

WHEREAS, it is deemed unfeasible to incur the cost of collecting or refunding balances of less than \$10.00,

NOW, THEREFORE, BE IT RESOLVED, by the Governing Body of the Borough of Avon-By-The-Sea that the Tax Collector, pursuant to R.S. 54:4-91 and R.S. 54:4-91.2 is authorized and directed to cancel the 2011 tax and water/sewer balances less than \$10.00 and credit balances of less than \$10.00 for each of the properties.

The Vote:

Aye: All

No: None

RESOLUTION offered by Mahon seconded by Gorman that,

WHEREAS, the State of New Jersey has mandated the use of the MODIV Property Assessment Computer System for all New Jersey Municipalities; and

WHEREAS, the Board of Chosen Freeholders of the County of Monmouth, in conjunction with the County Board of Taxation, is offering the County’s MOD IV Property Assessment Computer System services to the municipalities; and

WHEREAS, a Shared Services Agreement has been proposed for this purpose, pursuant to N.J.S.A. 40A:65-1 et seq., and

WHEREAS, it is in the best interest of the Borough of Avon-By-The-Sea to enter into such an agreement;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Borough of Avon-By-The-Sea, that the agreement entitled, “Agreement Between the County of Monmouth and the Borough of Avon-By-The-Sea for MODIV Property Assessment Computer Services”, be approved for the January 1, 2012 through December 31, 2021; and

BE IT FURTHER RESOLVED, that the Mayor and Clerk be and are hereby authorized and directed to execute the contract agreement.

The Vote:

Aye: All

No: None

RESOLUTION offered by Mahon seconded by Gorman that,

WHEREAS, the Employer desires to attract and retain qualified employees; and

WHEREAS, the implementation of a Deferred Compensation Plan will serve the interests of the Employer by enabling it to provide enhanced retirement security to its eligible employees; and

WHEREAS, the accrual of tax benefits to eligible employees through participation in a Deferred Compensation Plan as established pursuant to *Section 457 of the federal Internal Revenue Code* will serve the above objectives; and

WHEREAS, there will be no cost to the Employer to adopt and implement a Deferred Compensation Plan.

NOW, THEREFORE BE IT RESOLVED that the Employer hereby adopts a Deferred Compensation Plan provided by *The Hartford - Plan Document Identifier: 80-PD-Hartford-100511 - Service Agreement Identifier: 75-SA-Hartford-082609*; and

BE IT FURTHER RESOLVED, that the Employer is adopting a Deferred Compensation Plan substantially similar to one on which a favorable Private Letter Ruling has been previously obtained from the federal Internal Revenue Service except for provisions added by reason of the Small Business Job Protection Act of 1996 (United States Public Law No. 104-188), the Taxpayer Relief Act of 2001 (United States Public Law No.105-34), and the Economic Growth and Tax Relief Reconciliation Act of 2001 (United States Public Law No. 107-16) as well as good faith provisions added by reason of the Pension Protection Act of 2006 (United States Public Law No. 109-280), Heroes Earnings Assistance Act of 2008 (United States Public Law No. 110-245), Worker, Retiree, and Employer Recovery Act of 2008 (United States Public Law No. 110-458) and associated guidance, and all such provisions are stated in the plan in terms substantially similar to the text of those provisions in the Internal Revenue Code Section 457. The use of such Ruling is for guidance only and acknowledges that for federal Internal Revenue Service purposes, the Ruling of another employer is not to be considered precedent; and

BE IT FURTHER RESOLVED, that Timothy Gallagher, Administrator is hereby designated as the Local Plan Administrator for the administration of the Plan; and

BE IT FURTHER RESOLVED, the Local Plan Administrator reviewed information obtained at the request of the Employer from the following Deferred Compensation providers:

***THE HARTFORD
NATIONWIDE
METLIFE
EQUITABLE***

BE IT FURTHER RESOLVED, that as a result of reviewing the above referenced information, The Hartford was the successful vendor. The Hartford was selected for the following reasons:

- **Financial stability**
- **Number and type of available investment options**
- **Administrative and service capabilities**
- **Experience in the marketplace**
- **Cost**

BE IT FURTHER RESOLVED, that there has been no collusion, or evidence or appearance of collusion, between any local official and a representative of the contractor in the selection of a contractor for the administration of a Service Agreement pursuant to N.J.A.C. 5:37-5.7.

BE IT FURTHER RESOLVED, that Timothy Gallagher is hereby authorized to execute a Service agreement with *The Hartford - Service Agreement Identifier: 75-SA-Hartford-082609* and to submit all necessary documents to the Director of the Division of Local Government Services in the State Department of Community Affairs for approval.

The Vote:

Aye: Commissioner Gorman, Mayor Mahon

No: None

Abstain: Commissioner McGovern

RESOLUTION offered by McGovern seconded by Mahon that,

WHEREAS, the Borough of Avon-By-The-Sea (the "Borough"), in the County of Monmouth, State of New Jersey, has determined that there exists a need within the Borough to finance the costs of various capital improvements throughout the Borough (the "Project"); and

WHEREAS, the Borough Council has duly adopted various bond ordinances (the "Ordinances") to appropriate monies and authorize the issuance of bonds or bond anticipation notes to undertake the Project; and

WHEREAS, the Borough has determined to finance the Project with the proceeds of a loan (the "Loan") to be made to the Borough by the Monmouth County Improvement Authority (the "MCIA") in connection with the 2011 Pooled Governmental Loan Program (the "Program"); and

WHEREAS, in order for the Borough to receive the Loan from the MCIA, it is necessary to combine the bonds authorized under said Ordinances into three (3) separate series of general obligation bonds in the aggregate

principal amount of not to exceed \$3,283,874, consisting of beach utility bonds in the aggregate principal amount not to exceed \$403,750, water utility bonds in the aggregate principal amount not to exceed \$1,076,350 and general improvement bonds in the aggregate principal amount not to exceed \$1,803,774 pursuant to the provisions of the Local Bond Law, N.J.S.A. 40A:2-1 et seq., as amended and supplemented (the “Local Bond Law”);

WHEREAS, to evidence the Loan, the MCIA also requires the Borough to authorize, execute, attest and deliver the Borough’s not to exceed \$3,283,874 General Obligation Bonds, Series 2011 (which may be issued either as one bond, with three (3) separate maturity schedules, or three (3) separate bonds) (the “Bonds”) in accordance with the provisions hereof and pursuant to the terms of the Local Bond Law, N.J.S.A. 40A:2-1 et seq. (the "Local Bond Law") and other applicable law; and

WHEREAS, section 27(a)(2) of the Local Bond Law allows for the sale of the Bonds to the MCIA without any public offering, all under the terms and conditions set forth herein and in a Bond Purchase Agreement to be negotiated by and between the Borough and the MCIA.

NOW, THEREFORE, BE IT RESOLVED by a two-thirds vote of the full membership of the Board of Commissioners of the Borough of Avon-By-The-Sea, in the County of Monmouth, State of New Jersey, as follows:

Section 1. Pursuant to the provisions of N.J.S.A. 40A:2-26(f), the bonds of the Borough, authorized pursuant to the bond ordinances of the Borough heretofore adopted and described in Section 2 hereof, shall be combined into three (3) separate series of General Obligation Bonds, Series 2011 in the aggregate principal amount of not to exceed \$3,283,874 and may be issued either as one bond, with three (3) separate maturity schedules, or three (3) separate bonds.

Section 2. The principal amount of bonds authorized by each ordinance to be combined into a single issue for the beach utility, a single issue for the water utility and a single issue for general Borough improvements as above provided, are described by reference to the ordinance number, description and date of final adoption, amount of issue and average period of usefulness determined in each of the bond ordinances are respectively as follows:

Beach Utility Bonds

<u>Ordinance Number</u>	<u>Description and Date of Final Adoption</u>	<u>Not To Exceed Amount of Issue</u>	<u>Useful Life</u>
06-2008	Various Capital Beach Improvements Finally Adopted 7/14/08	\$161,550	9.5 years
09-2009	Various Capital Beach Improvements Finally Adopted 6/8/09	\$64,100	8.25 years
06-2010	Various Capital Beach Improvements Finally Adopted 6/14/10	\$64,100	5 years
03-2011	Various Capital Beach Improvements Finally Adopted 4/25/11	\$114,000	5 years
NOT TO EXCEED TOTAL		\$403,750	

Water Utility Bonds

<u>Ordinance Number</u>	<u>Description and Date of Final Adoption</u>	<u>Not To Exceed Amount of Issue</u>	<u>Useful Life</u>
07-2008, as amended and supplemented by 15-2009	Various Capital Water Improvements Finally Adopted 7/14/08 and 10/26/09, respectively	\$299,250	17.6 years
10-2009	Various Capital Water Improvements Finally Adopted 6/8/09	\$207,100	10 years
07-2010	Various Capital Water Improvements Finally Adopted 6/14/10	\$95,000	8.4 years
04-2011	Various Capital Water Improvements Finally Adopted 4/25/11	\$475,000	9.85 years
	NOT TO EXCEED TOTAL	\$1,076,350	

General Improvement Bonds

<u>Ordinance Number</u>	<u>Description and Date of Final Adoption</u>	<u>Not To Exceed Amount of Issue</u>	<u>Useful Life</u>
08-2008	Various Capital Improvements And Acquisitions Finally Adopted 7/14/08	\$219,450	8.5 years
06-2009	Various Capital Improvements And Acquisitions Finally Adopted 4/13/09	\$329,450	8.5 years
08-2009	Acquisition Of Property, Finally Adopted 6/8/09	\$15,362	40 years
11-2009	Various Capital Improvements And Acquisitions, Finally Adopted 6/8/09	\$128,250	8.5 years
08-2010	Various Capital Improvements And Acquisitions Finally Adopted 6/14/10	\$541,262	10.1 years
05-2011	Various Capital Improvements And Acquisitions Finally Adopted 4/25/11	\$570,000	8.25 years
	NOT TO EXCEED TOTAL	\$1,803,774	

Section 3. The following matters are hereby determined with respect to the combined issue of Bonds:

(a) The average period of usefulness, computed on the basis of the respective amounts of Bonds presently authorized to be issued pursuant to each of the bond ordinances and the respective periods or average periods of usefulness therein determined, is not more than 7.32 years for the beach utility bonds in the aggregate principal amount not to exceed \$403,750, not more than 11.91 years for the water utility bonds in the aggregate principal amount not to exceed \$1,076,350 and not more than 9.17 years for the general improvement bonds in the aggregate principal amount not to exceed \$1,803,774.

(b) The Bonds of the combined issue shall be designated "General Obligation Bonds, Series 2011" (which may be issued either as one bond, with three (3) separate maturity schedules, or three (3) separate bonds) and shall mature within each of the average period of usefulness hereinabove determined.

(c) The Bonds of each combined issue shall be sold and issued in accordance with the provisions of the Local Bond Law that are applicable to the sale and issuance of bonds authorized by a single bond ordinance for each bond issuance and accordingly may be sold with other issues of bonds.

Section 4. The following additional matters are hereby determined, declared, recited and stated:

(a) None of the Bonds described in Section 2 hereof have been sold or issued heretofore, and the several bond ordinances described in Section 2 have not been rescinded heretofore and now remain in full force and effect as authorizations for the respective amounts of bonds set opposite the descriptions of the bond ordinances set forth in Section 2 hereof.

(b) The several purposes or improvements authorized by the respective bond ordinances described in Section 2 hereof are purposes for which bonds may be issued lawfully pursuant to the Local Bond Law and some of such improvements or purposes, if applicable and permitted by law, a deduction may be taken in any annual or supplemental debt statement.

Section 5. In accordance with the provisions of N.J.S.A. 40A:2-27(a)(2), the Borough hereby authorizes the sale and award of the Borough's not to exceed \$3,283,874 General Obligation Bonds, Series 2011 (which may be issued either as one bond, with three (3) separate maturity schedules, or three (3) separate bonds) (collectively, the "Bonds") to the MCIA in accordance with the provisions hereof and in accordance with the terms of a Bond Purchase Agreement by and between the Borough and the MCIA (the "Bond Purchase Agreement"). The Mayor or Chief Financial Officer of the Borough are each hereby authorized and directed, in consultation with Bond Counsel, to negotiate and approve the terms of the Bond Purchase Agreement. The Bonds have been referred to and described in the Ordinances being finally adopted at duly called and held meetings of the Borough Council and published as required by law and which Ordinances were combined into three (3) separate series for purposes of sale pursuant to this resolution, all pursuant to terms of the Local Bond Law and other applicable law.

Section 6. The Mayor and Chief Financial Officer of the Borough are each hereby authorized and directed, in consultation with Bond Counsel, to determine, in accordance with the Local Bond Law and pursuant to the terms and conditions established by the MCIA, the following items with respect to the Bonds:

- (a) The aggregate principal amount of the Bonds to be issued, provided that the total amount of Bonds issued shall not exceed the aggregate principal amount of \$3,283,874, consisting of beach utility bonds in the aggregate principal amount not to exceed \$403,750, water utility bonds in the aggregate principal amount not to exceed \$1,076,350 and general improvement bonds in the aggregate principal amount not to exceed \$1,803,774;**
- (b) The maturity and principal installments of the Bonds, which maturity shall not exceed 7.32 years for the beach utility bonds in the aggregate principal amount not to exceed \$403,750, not exceed 11.91 years for the water utility bonds in the aggregate principal amount not to exceed \$1,076,350 and**

not exceed 9.17 years for the general improvement bonds in the aggregate principal amount not to exceed \$1,803,774;

- (c) The date of the Bonds;
- (d) The interest rates of the Bonds;
- (e) The purchase price of the Bonds; and
- (f) The terms and conditions under which the Bonds shall be subject to redemption prior to their stated maturities.

Section 7. Any determination made by the Mayor or Chief Financial Officer pursuant to the terms hereof shall be conclusively evidenced by the execution and attestation of the Bonds by the parties authorized under Section 8(c) hereof.

Section 8. The Borough Council hereby determines that certain terms of the Bonds shall be as follows:

- (a) The Bonds shall be issued either in a single denomination and shall be numbered GO-1 or in three (3) separate denominations and shall be number GO-1, GO-2 and GO-3;
- (b) The Bonds shall be issued in fully registered form and shall be payable to the registered owners thereof as to both principal and interest in lawful money of the United States of America; and
- (c) The Bonds shall be executed by the manual or facsimile signatures of the Mayor of the Borough (the “Mayor”) and the Chief Financial Officer under official seal or facsimile thereof affixed, printed, engraved or reproduced thereon and attested by the manual signature of the Clerk of the Borough (the “Borough Clerk”).

Section 9. The Bonds shall be substantially in the form set forth in Exhibit A attached hereto with such additions, deletions and omissions as may be necessary for the Borough to comply with the requirements of the Program, upon the advice of Bond Counsel to the Borough (as defined herein);

Section 10. The law firm of Wilentz, Goldman & Spitzer, P.A., Woodbridge, New Jersey, Bond Counsel to the Borough (“Bond Counsel”), the Borough Engineer, the Borough Attorney and the Borough Auditor are each hereby authorized and directed to perform all actions necessary to consummate the issuance of the Bonds and the Project for which the Bonds are issued, including but not limited to, drafting and arranging for the printing and execution of the Bonds and all applicable documentation necessary to memorialize and consummate the issuance of the Bonds and the undertaking of the Project, preparing all necessary financial information, all engineering and design work, preparation of plans and specifications and conducting all necessary studies, searches and analysis in connection with the issuance of the Bonds and the undertaking of the Project. The Mayor, the Chief Financial Officer, the Borough Clerk, the Borough Attorney and any other Borough representative (including Bond Counsel or the Borough Auditor) are each hereby authorized and directed to execute and deliver any certificates necessary or desirable in connection with the financial and other information.

Section 11. The Mayor, Chief Financial Officer, the Borough Clerk and any other Borough representative or professional, including Bond Counsel, are each hereby authorized and directed to (i) execute any certificates or documents necessary or desirable in connection with the sale of the Bonds, including the Bond Purchase Agreement, or the undertaking of the Project and each are hereby further authorized and directed to deliver same to the MCIA upon delivery of the Bonds and the receipt of payment therefor or in accordance with the Program and (ii) perform such other actions as they deem necessary, desirable or convenient, in consultation with Bond Counsel, in relation to the execution and delivery thereof.

Section 12. Upon the adoption hereof, the Borough Clerk shall forward certified copies of this resolution: (a) via facsimile, to (i) Marion Masnick of the MCIA at facsimile number 732-409-4821, and (ii) John M. Cantalupo, Esq., of Wilentz, Goldman & Spitzer, P.A., Woodbridge, New Jersey, Bond Counsel to the Borough, at facsimile number 732-726-6573; and (b) via certified first class mail, to (i) Marion Masnick of the MCIA at The Monmouth County Improvement Authority, Hall of Records, Main Street, Freehold, New Jersey 07728, and (ii) John M. Cantalupo, Esq., of Wilentz, Goldman & Spitzer, P.A., Woodbridge, New Jersey, Bond Counsel to the Borough at 90 Woodbridge Center Drive, Woodbridge, New Jersey 07095.

Section 13. This resolution shall take effect immediately.

The Vote:

Aye: All

No: None

RESOLUTION offered by Mahon seconded by McGovern that Timothy M. Gallagher is hereby appointed as the Community Development Representative for 2012. Barbara Suchecki is appointed as the Alternate.

The Vote:

Aye: All

No: None

Motion by McGovern seconded by Gorman that the bills in the amount of \$260,737.35 be approved for payment.

The Vote:

Aye: All (Mayor Mahon abstains from P.D. bills)

No: None

Commissioner Gorman announced that the December 27th Board of Commissioners meeting is cancelled.

Dept. Heads:

Doug Carter, Recreation Dir. – ice skating pond is being installed.

Jeff Bramhall, DPW Supt. – leaves are almost done, reminder that recycling is for recycling only, there is a drop off bin for electronics – it is mandatory to recycle them, but we do not pick them up.

Jeff received several compliments about the young man that attends the recycling center. Jeff said he would pass them on to him.

Charlie Rooney, Engineer – start sewer rehab in mid-Jan. Should hear next month whether we get funds for our 2012 road projects.

Mike Pelech, Lt. P.D. – reminder to not drink & drive over the coming holidays. Reminded everyone about alternate side parking in the case of snow.

Mayor asks if anyone would like to be heard?

Marilyn Placitella asked about COAH and discussion took place regarding COAH and the bldg. of garage apts.

Motion by McGovern seconded by Gorman that being there is no further business, the meeting is adjourned.

The Vote:

Aye: All

No: None

Robert Mahon, Mayor

Robert P. McGovern, Commissioner

Francis E. Gorman, Commissioner

**Timothy M. Gallagher, RMC
Borough Clerk**