

**CLOSED SESSION
OF THE MAYOR AND COUNCIL
APRIL 26, 2021**

THE CLOSED SESSION OF THE MAYOR AND COUNCIL OF THE BOROUGH OF MANVILLE, COUNTY OF SOMERSET, STATE OF NEW JERSEY, WAS HELD ON APRIL 26, 2021 VIA CONFERENCE CALL

MAYOR RICHARD ONDERKO PRESIDED

ROLL CALL:

MAYOR RICHARD ONDERKO
COUNCILMAN JOSEPH LUKAC
COUNCILWOMAN SUZANNE MAEDER
COUNCILWOMAN MICHELE MAGNANI
COUNCIL PRESIDENT TED PETROCK III
COUNCILMAN STEPHEN SZABO
COUNCILWOMAN PATRICIA ZAMORSKI

ALSO PRESENT:

THADDEUS R. MACIAG, ESQ., BOROUGH ATTORNEY
FRANKLIN WHITTLESEY, ESQ., LABOR ATTORNEY
MR. PETER OUDA, ESQ.
BRETT RADI, BOROUGH ADMINISTRATOR
WENDY BARRAS, BOROUGH CLERK

CLOSED SESSION

**Borough of Manville
Resolution #2021-83
Closed Session**

BE IT RESOLVED by the Mayor and Council of The Borough of Manville, that an Executive Session of the Mayor and Council, from which the public will be excluded will be held upon adoption of this resolution for the purpose of discussing:

- Pending or Anticipated Litigation Matters

Exclusion of the public for this purpose (s) stated is expressly permitted by the provisions of the "OPEN PUBLIC MEETINGS ACT", N.J.S.A. 10:4-6, et. seq. It is not anticipated that the contents of the discussion will be made known until it has been determined that disclosure of the subject matter will not adversely affect the public interest and until the Mayor and Council have adopted a Resolution so concluding.

Borough of Manville,
/s/ Richard M. Onderko, Mayor

ROLL CALL: AYES: PETROCK, LUKAC, MAEDER, MAGNANI, SZABO, ZAMORSKI

The Closed Session of April 26, 2021 commenced at 7:55 P.M. Roll Call was taken to ensure all Council members were present.

DISCUSSION

- Possible Litigation Matters

Borough Attorney Maciag reviewed the details surrounding the investigation conducted by the Pension and Benefits Division on former Borough Attorney Frank Linnus. The State has determined he received approximately \$100,000 of benefits that he wasn't entitled to and gave the Borough erroneous advice that would solely benefit him.

Labor Attorney Whittlesey stated a letter had been sent to former Borough Attorney Linnus in hopes for peaceful negotiations, however, there has been no response from him. Attorney Whittlesey explained it was important to take actions now before the Borough loses the ability to do so. The goal is to be able to file a claim against his insurance carrier. Attorney Whittlesey stated it was in the Borough's best interest to hire Attorney Peter Ouda to file a suit against former Borough Attorney Linnus.

Attorney Ouda stated he anticipated to file a suit against Mr. Linnus and Mr. Linnus would likely submit it to his insurance carrier. There will be no money paid to Mr. Ouda unless the Borough is awarded a monetary settlement. It was discussed the possibility of a stay due to Mr. Linnus's administrative appeal.

Councilman Lukac questioned the possibility of a conflict of interest with Mr. Ouda. Councilman Petrock questioned the number of appeal Mr. Linnus could possibly have.

Clerk Barras read Resolution #2021-84 and the attached agreement into the record.

Borough of Manville
Resolution #2021-84
Resolution Authorizing Professional Service Agreement
with Peter A. Ouda, Esq. of Peter A. Ouda, LLC, For
Professional Services as Special Litigation Counsel

WHEREAS, the governing body of the Borough of Manville believes it is in the best interest of the Borough to retain Peter A. Ouda Esq. of the law firm Peter A. Ouda, LLC, as Special Litigation Counsel for certain pending matters regarding former professional personnel of the Borough; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1, et seq.) requires that the resolution authorizing the award of contracts for "professional services" without competitive bids on the contract itself must be available for public inspection; and

WHEREAS, Peter A. Ouda, Esq. of the law firm Peter A. Ouda, LLC is well qualified to perform the duties of Special Litigation Counsel, and has provided the Borough with a satisfactory proposal.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of Borough of Manville, County of Somerset, and State of New Jersey; as follows:

1. Peter A. Ouda, Esq. of the law firm Peter A. Ouda, LLC shall serve as Special Litigation Counsel to the Borough for the limited purpose of providing legal counsel to the Borough only for the matter described in the attached agreement letter.
2. The attached proposal from Peter A. Ouda Esq. of the firm Peter A. Ouda, LLC, 19 North Bridge Street, Somerville, NJ 08876 is approved.

3. This contract is awarded without competitive bidding as a "Professional Service" in accordance with N.J.S.A 40:11-5(1)(a) of the Local Public Contracts Law, at the percentage rate of 25% to 33% of any recovery, with the Borough to incur no fees unless there is a recovery, per the terms set forth in the attached proposal.
4. The Borough Administrator or Borough Clerk are hereby authorized to execute the annexed the Professional Services Agreement Letter, as consistent with the terms of this Resolution.
5. This Resolution shall be advertised once in accordance with law.
6. The Chief Financial Officer shall provide a Certification of Funds, if and as necessary.

Borough of Manville,
/s/ Richard M. Onderko, Mayor

Borough Administrator questioned the legality of adopting a resolution in Closed Session. Borough Attorney Maciag provided an explanation. At the next Council meeting the resolution would be ratified for purposes of publication.

Councilwoman Zamorski stated a conflict of interest and was advised she could abstain from the resolution roll call if she wished.

Mayor Onderko requested a motion to adopt Resolution #2021-84 for purposes of reimbursement to the Borough.

Councilman Szabo seconded by Councilwoman Magnani made a motion to adopt Resolution #2021-84.

ROLL CALL: AYES: PETROCK, LUKAC, MAEDER, MAGNANI, SZABO
ABSTAIN: ZAMORSKI

Conversation ensued amongst the Council on the topic.

At 8:25 p.m. with no further business to discuss the Closed Session ended.

ATTEST:



Wendy Barras, Borough Clerk