

BOROUGH OF CAPE MAY POINT

Planning Board

Meeting Minutes

Wednesday, May 20, 2020 at 7:00 pm

Cape May Point Municipal Offices - ZOOM

Pledge of Allegiance

Opening

In compliance with the Open Public Meetings Act, adequate notice of this session has been provided by official announcement in the Star and Wave Newspaper and posting of the scheduled meeting dates on the official Municipal Bulletin Board, 215 Lighthouse Avenue, Borough of Cape May Point, New Jersey.

Roll Call

Present: Mr. Greenberg, Comm. vanHeeswyk, Mayor Moffatt, Mr. Casey, Mr. Hood, Ms. Busch, Mr. Yunghans, Mr. Murphy, Mrs. Leming, Ms. Kelly, Mr. Sowers

Absent: Mr. Keosky

Also Present: Rhiannon Worthington, Secretary; Mr. Nathan Van Embden, Esq., Attorney

Minutes

The minutes from the April 15, 2020 meeting were approved with correction on a motion by Ms. Busch and second by Mayor Moffatt. All present voted aye.

Business

1. Resolution PB2020-03: 209 Ocean Avenue, Block 28, Lots 1 & 10
 - a. Mr. Casey expressed concern regarding the Board not following the process in the Borough Code of stating findings of fact and conclusions of law during hearings. He also stated that the hearing process guidance provided by Mr. Van Embden was the same as the code. He further expressed concern at the failure to follow the guidance in "New Jersey Zoning and Land Use Procedures" that members acknowledge on the record that they have read the resolution, understand it, and agree with the content as stated within resolutions regarding variances, by which he feels the motion should indicate that an affirmative vote indicates your agreement with them as written in the resolution.
 - b. Motion made by Ms. Busch which indicated that an affirmative vote indicated agreement with the findings of facts and conclusions of law as written in the resolution, and second by Mr. Yunghans. All present voted aye.
2. Resolution PB2020-02: 502 Oak Avenue, Block 1, Lot 64.01
 - a. Motion made by Mr. Greenberg and second by Mr. Casey. All present voted aye except for Mayor Moffatt and Comm. vanHeeswyk who recused themselves.
3. Historic Preservation Discussion
 - a. Mr. Yunghans presented the Board a summary report of the subcommittee's findings to date and provided all supporting documentation and reviewed verbally. The report recommended that the information be provided to the Commissioners for determination of community support and any further associated action. Copy has been included with these minutes.
 - i. Mayor Moffatt asked about a flowchart towards the end of the Power Point presentation, indicating the next step was to draft an ordinance for public review. Discussion indicated that the subcommittee felt that this project was now at a policy level and should be turned back to the Commissioners for that reason.

- ii. Mr. Casey noted that the January 2019 minutes from the Commissioners meeting indicate their request of the Planning Board, thought not memorialized by resolution or formal request, was to determine the public sentiment towards historic preservation and a possible commission.
- iii. Comm. vanHeeswyk stated that she does not feel there is enough information for this to be returned to the Commissioners. She noted that the previous questionnaires sent to the public were completed by the Planning Board and that there are sufficient funds available for another public survey to be completed. She also stated points which indicate there is a lack of focus in the subcommittee's report in regards to recommendations:
 - i. The circuit rider states that an historic preservation ordinance would be inappropriate for the town.
 - ii. Joe Jordan review recommends the Borough abandon efforts to proceed with historic preservation.
 - iii. Master plan indicates a similar sentiment and would not support Council proposing or adopting a historic preservation ordinance.
- iv. Mrs. Worthington noted that the survey Comm. vanHeeswyk was referencing was from 1993 and addressed all aspects of the Master Plan, not just one part.
- v. Mr. Van Embden stated that if the governing body wanted to proceed with an ordinance which they felt may be inconsistent with the Master Plan, they would then have to request review and recommendation from the Planning Board, at which time they could choose to amend the Master Plan if recommended. The need for this change would need to be determined by the governing body.
- vi. Mr. Casey stated that he feels there has not been enough discussion of opinions or the information provided by the subcommittee.
- vii. Mr. Greenberg summarized that this task was brought to Planning Board. It has been made clear that without an HPC there is no means of protecting any historic structures. He stated that he is aware this subject has come up unsuccessfully on several previous occasions. He feels that the Commissioners can propose historic preservation or not, regardless of public sentiment, and therefore requests a poll of the Board members to determine if this Board wants to recommend a historic preservation ordinance or not.
- viii. Mrs. Busch asked for details of what the governing body requested of the Planning Board. Mrs. Worthington responded that she would confirm with the Municipal Clerk, however, she does not believe Council formally requested action by the Planning Board regarding this topic. Mr. Greenberg confirmed the subcommittee was formed voluntarily to address a concern of the community.
- ix. Comm. vanHeeswyk feels that the Master Plan conflicts with establishing an HPC so it must be modified first. Mrs. Busch asked if the Master Plan could be modified simultaneously with the creation of the ordinance. Mrs. Worthington asked why the Master Plan should be revised when it hasn't been determined that it is inaccurate.
- x. Mrs. Busch noted that some of the unanswered questions relate to the cost of an HPC to the community and that those questions are at the governing body level and not related to Planning Board function.
- xi. Ms. Kelly stated that the circuit rider recommended the Planning Board act as an HPC if one were to be established, as was also recommended by Mr. Kinney in January. She is unclear how the Planning Board is responsible to determine what the governing body wants the Planning Board to do.
- xii. Mr. Casey noted that in the 2017 Reexamination, the Historic Preservation Element recommends updating the list of potential historic structures and creation of an HPC as a community resource. He stated that although MLUL permits the Planning Board to act as an HPC in certain communities, he would advise against that in Cape May Point to prevent one board from having zoning, planning and historic preservation powers.

- xiii. Mr. Yunghans again stated that it was necessary to determine who was responsible to establish what the public wants. There was a general discussion about the different areas affected by the lack of direction from the governing body.
- b. An informal poll of the Board was taken:
 - i. Mr. Greenberg supports the report being provided to the Commissioners to determine if they would like to see an HPC for well defined purposes.
 - ii. Ms. Busch agreed with the subcommittee's report to return the task to the Commissioners.
 - iii. Mayor Moffatt and Comm. vanHeeswyk abstained.
 - iv. Mr. Murphy agreed additional guidance was needed from the Commissioners for the Board or subcommittee to proceed further. He expressed concern about accumulating members for another board in the Borough, but was also concerned about consolidating all powers of planning, zoning and historic preservation to one board.
 - v. Mr. Hood agreed additional guidance is needed from the Commissioners. He expressed concern about "one person" demolition and construction review, similar to consolidating all powers into one board. He doesn't understand why the HPC can't function as described in the Master Plan. He would like to hear more feedback from the public.
 - vi. Mr. Casey agreed that the subcommittee's report provides the Commissioners what they need to proceed. The Master Plan and Reexamination provide the Commissioners what they need to establish an HPC with an advisory function within the Borough without further work from the Planning Board. He noted that there are recommendations within the Master Plan that could support ordinance to further historic preservation efforts within the Borough.
 - vii. Mr. Yunghans agrees that additional guidance is needed from the Commissioners. He clarified that an HPC does not need to be made up solely of members from the Planning Board. He feels that it's time to get clarity on the project to ensure it meets the needs of the Master Plan and the people.
 - viii. Mrs. Leming is in favor of a HPC which is voluntary and provides perks to participants.
 - i. Comm. vanHeeswyk asked Mr. Van Embden if perks such as tax breaks or credits are a possibility. Mr. Van Embden believes that tax credit perks are likely under the jurisdiction of the Commissioners, but the logistics would be beyond his scope.
 - ix. Ms. Kelly is still unsure how she feels about historic preservation within the Borough based on the information presented to date but agrees that the report should be returned to the Commissions for more specific direction.
 - x. Mr. Sowers noted that it was necessary for a team, maybe of commissioners and planning board members, to develop a survey to get feedback from the community, to determine direction.
 - xi. Mrs. vanHeeswyk added comment in regard to referendum suggestion by Mr. Van Embden to assess community interest, that only about 1/3 of the town votes.
 - xii. Mrs. Worthington summarized that 5 board members supported the subcommittee's recommendation to return to the Commissioners and four board members did not specifically state one their support or lack of. There was no one who stated that the task should remain with the Planning Board at this time.
 - xiii. Mr. Greenberg stated that he feels that the overall sentiment is that historic preservation is important and desirable, but the reality is the logistics involved may not work for Cape May Point.
 - i. Comm. vanHeeswyk asked informally who from the Planning Board would be interested in participating in an HPC if one were formed.
 - ii. Mr. Casey and Ms. Kelly spoke regarding their understanding that consolidating the HPC with the Planning Board would then make it a task for the entire Planning Board, not just select members. Mrs. Worthington confirmed per MLUL that it would be the entire Planning Board including the two additional Class A and Class B members.
- c. Ms. Kelly made a motion to return this matter to the Commissioners with the request they provide the Planning Board with precisely what they would need to move this forward. Mr. Yunghans second.
 - i. Motion was withdrawn prior to vote.

- d. Mr. Greenberg made a motion to refer the matter back to the Commissioners with all collected data to determine if they are in favor of an HPC and define it for the Borough. Once decided, they can request specific support from the Planning Board, but ultimately the decision regarding the establishment of an HPC should reside with them. Ms. Busch second. All present voted aye.
- e. Resolution will be memorialized at next scheduled meeting.
4. Mr. Casey asked about the Capital Improvement Plan in code section 105-8 brought up by Mr. Fraatz in January. It was requested this be on the next agenda.
 - a. Mrs. Worthington advised proposed capital spending would be reviewed in September as established at the last meeting.
 - b. Mr. Casey stated he was not talking about that, he was referencing a 6 year budget plan, consistent with language from MLUL, which was located in the Borough code.
 - c. Mr. Van Embden disagrees with Mr. Casey's interpretation of the MLUL and Borough code sections referenced.
 - d. Mr. Casey disagreed with Mr. Van Embden's statement. He stated he could provide copy of the information for his review but the bottom line is the Planning Board needs to meet the duty set before them by ordinance or the ordinance should be removed.
 - e. Mrs. Worthington requested Mr. Casey provide copy of the specific section in MLUL and the Borough code which he referencing so they are available for reference during discussion. Mr. Casey agreed to do so and noted he was not looking for lengthy discussion, just to ensure the Board is completing its obligations.
 - f. Mr. Greenberg thanked Mr. Casey for his thorough knowledge and understanding of zoning code and land use, ensuring the Board is completing all necessary tasks and requirements, but asked if he could please provide his questions in advance of the meeting in the future to ensure everyone has the necessary information to fully participate in any discussion.
5. Comm. vanHeeswyk informed the Board that the Municipal Public Access Plan was expected to be ready for approval by NJDEP and would need review and recommendation from the Planning Board. She did not have a firm time frame for when this would be returned.

Public Comment

1. Public comment opened at 8:50 pm on a motion by Comm. vanHeeswyk and second by Mayor Moffatt.
2. Public comment closed at 8:51 pm on a motion by Comm. vanHeeswyk and second by Mayor Moffatt.

Board Information

1. Mrs. Worthington announced an opening on the Completeness Review Committee and asked that anyone interested in filling the position should contact her.
2. Mrs. Worthington reminded all Board members to file their Financial Disclosure Statement (FDS) if not already completed. She noted that fines and/or state penalties would be following for those who do not complete it. She suggested contacting the Municipal Clerk for technical assistance if needed.

Adjournment

The meeting adjourned at 8:52 pm on the motion by Comm. vanHeeswyk. All present voted aye.

Respectfully Submitted by:

Rhiannon Worthington

Board Secretary

Approved by Board 6/17/2020