

BOROUGH OF CAPE MAY POINT

Planning Board

Meeting Minutes

Wednesday, January 16, 2019 at 7:00 pm

Cape May Point Fire Hall

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, Mr. Keosky, Comm. vanHeeswyk, Mr. Murphy, Mr. Fraatz, Mr. Casey, Mr. Hood, Mrs. Busch
Absent: Mrs. Gibson, Mr. Yunghans
Also Present: Rhiannon Worthington, Secretary; Mr. Nathan Van Embden, Esq., Attorney

Minutes

The minutes from the October 17, 2018 meeting were approved with correction on a motion by Mr. Keosky and second by Mrs. Fraatz. All present voted aye.

The minutes from the November 28, 2018 meeting were held for approval at the next scheduled meeting.

Business

1. Drainage Subcommittee Update.
 - a. Mr. Keosky redistributed last subcommittee report, provided in August, which determined that the existing ordinance was sufficient and did not recommend the proposed revision. He stated that the next step is for the Planning Board to revise the Master Plan accordingly.
 - b. Mr. Van Embden will send a letter to the Commissioners with the Board's recommendations.
 - c. Mrs. Busch asked about outcome of meeting with Mr. Sullivan as she was not present at November meeting when it was discussed and the minutes were not yet available for review.
 - i. Mr. Keosky responded that they did meet and that, while he made some recommendations, thought the proposed ordinance was not appropriate for the Borough and the existing ordinance, although in need of revision, was sufficient for the time being.
 - ii. Mrs. Busch noted that she is working with Mr. Sullivan on a landscape ordinance through the Environmental Commission and he will not proceed further without the stormwater and drainage ordinance changes finalized.
 - iii. Comm. vanHeeswyk noted that Mr. Graham had been contacted as well.
 - iv. Mr. Keosky clarified that the outcome of all discussions was that the existing ordinance could be challenged in court as it was inconsistent with the Master Plan, therefore, the Master Plan must be updated to language that includes properties smaller than 1 acre.

- v. Comm. vanHeeswyk advised Mrs. Busch to follow up with Mr. Sullivan with the information she has now about the Board's status to determine if they can begin work on the landscape ordinance.
 - d. Comm. vanHeeswyk indicated that the Board should follow up with Mr. Sullivan to confirm what changes need to be made in the Master Plan so the Planning Board can complete that process. Mr. Van Embden indicated that notice should be sent to the Borough regarding the Board's position on the previous ordinance so an ordinance consistent with the Master Plan revisions could be drafted.
 - e. Mrs. Worthington and Mr. Van Embden both agreed that correspondence must have been sent to the Commissioners in August or September as they requested the recommendation before second reading of their ordinance. Mrs. Worthington noted she would check the files and advise.
 - f. There was discussion among the board members about an appropriate lot size to designate in the Master Plan and ordinance.
 - g. Mr. Greenberg summarized that this topic was discussed and reviewed at length with the Board and professionals and the final determination was that the ordinance had to be modified to be applicable to more properties in town. Otherwise, the ordinance as written was deemed sufficient for the needs of the Borough. It is now back on Council to determine if further change is needed and to draft a new proposal for review.
 - h. Mrs. Busch noted that she compiled a summary of rain data for the Environmental Commission, when the proposed ordinance was introduced in August, and noted that 2018 was one of the top 5 years for rain fall in the area since 1894. She thinks this is relevant to increased drainage issues and resident complaints regarding flooding more so than adjacent property development, however, it's hard to distinguish between the two.
 - i. Mr. Van Embden indicated he would draft a letter to the Commissioners with the Board's comments and circulate to Gregg and Mike for review prior to sending to ensure it accurately reflected the Board and Subcommittee's status.
2. Construction and Noise Subcommittee Update.
- a. Mr. Casey distributed via email a modified draft Chapter 76 Construction Site Standards per discussion at the previous board meeting. Summary of the changes includes removal of a blanket prohibition on construction during summer months, retention of weekend/holiday prohibition, updates to be mirror Cape May ordinances, and adds requirement for silt fence or socks for sediment control.
 - b. Discussion among the Board indicated:
 - i. Tree removal should be added to the weekend/holiday prohibited activities list.
 - ii. Landscape/tree maintenance restrictions apply to contractors only; landscape/tree maintenance completed by a property owner will not be restricted.
 - iii. All Zoning Officer references for enforcement should be changed to Code Enforcement or Construction Official as appropriate.
 - iv. Reciprocating changes to be made in Chapter 120 Peace and Good Order.
 - v. Board members agreed that the proposed changes were well written, not too restrictive, and seemed to meet the needs of the community.
 - c. Mr. Greenberg asked if there has been any commentary from the public on this topic.
 - i. Mr. Casey indicated he reviewed Council minutes from 2018 where he saw 4 or 5 public comments regarding various aspects of construction and noise.
 - d. As per Mr. Greenberg, letter received from Mr. and Mrs. Francis Moon was read aloud by Mrs. Worthington.
3. There was Board discussion regarding how value determination for FEMA requirements and its apparent effect on retention of cottages within the Borough. Comm. vanHeeswyk confirmed that means of assessment must be approved by FEMA. There was also discussion about why people choose to keep the cottages and pay increased flood insurance rates. Mr. Greenberg indicated he wanted to remove the subjectivity and ensure most favorable means of assessment is used. Suggestion was made to find out what

valuation procedures are acceptable to FEMA and determine which method would provide the most positive assessments for the preservation of cottages. Mr. Keosky voiced concern about extra expense associated with additional appraisal being burden of tax payer. Comm. vanHeeswyk indicated she would obtain and provide to the Board members the current permitted means of assessment.

4. There was Board discussion regarding current floor area ratio (FAR) standards including porches. Suggestions to address included an option to have a porch in addition to FAR or having a sliding scale for FAR based on lot size. It was noted that this topic had been brought up previously by an architect representing an application; Mr. Casey indicated he would locate that correspondence. Comm. vanHeeswyk noted that she gets nervous about adjusting the FAR because she is aware of how close Cape May Point's zoning is to Avalon, the only difference being the FAR requirement.

Public Comment

1. Public portion opened at 8:32 pm on a motion by Mrs. Busch and second by Mr. Greenberg. All present voted aye.
2. No public comment.
3. Public portion closed at 8:32 pm on a motion by Comm. vanHeeswyk and second by Mr. Greenberg. All present voted aye.

Board Information

None

Adjournment

The meeting adjourned at 8:34 pm on the motion by Comm. vanHeeswyk and second by Mr. Fraatz. All present voted aye.

Respectfully Submitted by:

Rhiannon Worthington

Board Secretary

Approved by Board 3/20/2019

Letter to the Cape May Point Commissioners on Summer Construction Noise

January 13, 2019

From: Francis and Elizabeth Moon

315 Stites Avenue

I have owned property at the Point since 1986 on 315 Stites Ave between Ocean and Pearl. I had a summer home built in 1992 by builder Jack Hand and architect Steven Fenwick. I now retired and spend two to three months in the summers at the Point with family and friends. My eight grandchildren have grown up playing on the streets and beaches of the Point for a quarter century.

However, in the past 8-10 years, **seven** new houses have been built on Stites or Brainard Street behind me. This past summer there was one across the street in major renovation and one new house under construction behind us. Two of the major issues that detracted from our enjoyment of our summer home were construction noise and construction vehicle parking. In both cases there was no recourse for us to complain.

In making ordinances regarding construction and noise at the Point, some may claim that property rights override concerns about community wellbeing. Others, particularly subcontractors claim that they have a right to make a living by providing services to Point property owners. However, in formulating law and codes, I suggest that a more fundamental right of Point owners is the **"Pursuit of Happiness"** as contained in the Declaration of Independence. I would venture to say that 90% of point owners have their homes to enjoy the peace and quiet of the summer season, to be able to walk without fear of large trucks and service vehicles, for their children and grandchildren to ride bikes in safety and to be able to sit on their porch or deck and talk with friends and listen to the birds, wind and surf.

This past summer of 2018, at times there were five to seven construction vehicles across from my home on Stites Ave. At night we would often move our cars onto the street to save a spot for arriving guests the next day. Sometimes contractors came before 8AM and worked past 6PM and also on the weekends. Our neighbor had a construction vehicle ride over his new lawn and cause significant damage. In addition, subcontractors would set up workbenches in front of the project, or near the street and use noise producing machines all day. In an earlier construction project in front of my home, subcontractors put electrical generators on all day in front of my home, denying me the use of my front porch which became impossible to read a book or enjoy a conversation with my guests.

But daytime noise is not the only problem. The subcontractor for the new house behind us on Brainard Street left a pressure generator for a nail gun on all night, forcing us to shut all windows in order to sleep.

Construction noise at the Point in the summer is part of the **larger noise issue** as property maintenance has become a more important value than "pursuit of happiness". Beginning in the last decade, we are visited daily by a phalanx of landscape companies, with an armada of service vehicles and noise producing machines. Others involve power washing machines, tree trimming companies with chain saws and the dreaded chipper machine. One neighbor of mine complained that a new home owner behind him was regularly power washing part of his new home every other weekend.

Whether the cause or the effect, I have observed in my neighborhood, many summer 'residents' have opted to only come to the Point on the weekend, thus avoiding weekday maintenance noise and the hassles of construction. My wife and I don't have that option since we live six hours [320miles] north in Ithaca, NY.

What options should the Commissioners consider? As for construction in general, I have been told that other shore communities have banned or limited major construction in the summer months of July and August. Whatever the legal issues, from a public safety issue alone, when human density at the Shore is ten times the off season, major construction should be banned. From a human health issue alone, the use of high decibel machines for extended times should be limited. Health and safety issues should be foremost, not the rights of developers and contractors. Local health officers should have a noise level code to enforce and a decibel meter to measure sound levels.

Limiting the negative effects of construction during the summer is one issue. But often the major problem is not often the owner or even the contractor per se but the sub-contractors. Builders at least want to please the community because they want new jobs. But sub-contractors are transient and move from town to town every day and have no vested interest in conforming to community noise and safety concerns.

When noise or safety is a problem for neighbors, a big issue is **whom do we call?** The project property owner may be living a thousand miles away. Posting the developer's and contractor's telephone numbers on the site would be good, but most often, no one answers. Sub-contractors usually ignore local complaints. Thus, we are left to call one of the commissioners. The Point should consider

assigning a staff person to handle resident complaints of noise and safety issues and that person given enforcement tools to address the problems.

One tool to consider would be to publicly **post the dates of construction tasks** so one can plan to be away on the day the pile driver comes at the site or when the roofing and siding teams will be on site. Often construction is sporadic and chaotic; one week off another on, depending on weather and when the subcontractors will arrive. [Local lore says work crews come depending on whether the fishing is good or not.]

The larger issue for the Commissioners is what kind of community the Point will become. In recent years developers have chosen to build sealed-up 2100 sf air-conditioned boxes with suburban lawns so they could put on a million-dollar price tag. The front porch is disappearing and the neighborliness that goes with it. Noise is not an issue when you are sealed in an AC box with windows closed. Property maintenance of the new Million\$ home becomes a high priority, bringing the noise that accompanies it.

The rigid code restrictions on older and particularly smaller homes often result in tearing down beautiful cottages to build new sealed noise-proof boxes. I believe that many existing and potential new owners, would choose to fix up older homes than tear them down, given more reasonable code restrictions. On my Stites block alone there are three more developable lots and six smaller homes that could end up as new construction sites in the future. Without new rules for development at the Point, I can only see more noisy summers in the future.