

**NOVEMBER 12, 2020
REGULAR MEETING MINUTES**

The Regular Meeting of the Board of Commissioners of the Borough of Cape May Point was called to order by Mayor Moffat at 6:00 PM. The Open Public Meetings Statement was read by the Clerk who then led those present in the flag salute. Mayor Moffatt, Commissioner Mullock and Commissioner vanHeeswyk answered roll call. Also in attendance: Administrator Ed Grant, Clerk Elaine Wallace, and Solicitor Brock Russell. This meeting was held via teleconference under local operation guidance from the NJDCA, pursuant to P.L. 2020, c. 11.

COMMISSIONERS' REPORTS:

Request for Letter of Support: Mayor Moffatt asked the commissioners for input. Commissioner vanHeeswyk was fine with the Mayor signing the sample letter. Commissioner Mullock suggested the Borough's concerns be included, particularly with regard to the impact of the project on the flyway and marine life. Commissioner Mullock pointed out the site being considered at this time is the one near Atlantic City, not near Cape May. He also explained the proposed windmills would be the largest in the world at this time, with the rotors covering an area roughly equivalent to that of Lake Lily. In addition, he felt there would be an impact on the environment with regard to noise and the size of the cables through which electricity would be transmitted. Mayor Moffatt will compose a letter and have the Clerk share it with the other commissioners for comment and editing.

Commissioner Mullock reported Public Works is finishing up seasonal work and preparing for winter. Also, on the agenda, is a resolution authorizing the sale of a 2008 Polaris.

Commissioner vanHeeswyk reported the Borough's new server has been installed. The Hazard Mitigation Annex has been submitted to the County. It is an overview of the Borough's risk and vulnerability and contains a prioritized plan to avoid future losses. The Borough has a greater chance of getting grant funds for project contained in the plan. Mrs. vanHeeswyk offered some statistics on private flood insurance premiums, which average between \$790 and \$919 depending on which flood area the house is located. She also reminded people they can contact the floodplain administrator who will inspect their properties and offer advice. The Borough's beach replenishment will begin shortly and be finished in December. The project will backpass sand from the State Park to the Borough's beaches beginning at the west end of St. Pete's. It is estimated to take about 50 trucks per day every day starting at 7 am. The trucks will have an escort and all properties within 500' of the project area will receive notices. People are advised to stay away from the trucks and beaches during the project. The beach entrances at Lehigh, Whilldin, Coral and St. Pete's will be closed as will Harvard Avenue. The project is expected to take 10 days to complete. In addition to the beach replenishment, work will be done to clean out our outfall pipe near the bunker. And best of all, the cost to the Borough has been determined to be \$30,517.50. Typically, the replenishments cost

over \$100,000. Lastly, she asked if the project could include clearing sand out of the beach saver reef locations. Unfortunately, that could not be added to this project, but possibly it can be considered for the next round.

Mayor Moffatt thanked the Code Enforcement officers for their recent work. He reported Atlantic City Electric has finally delivered notices about tree pruning starting soon. He also reported he has not heard back from the County Engineer on the traffic calming projects. And Finally, the wished everyone a safe and healthy Thanksgiving.

In light of a few recent swan injuries, Commissioner vanHeeswyk reported she asked Atlantic City Electric to install small reflective disks on the wires near the lake to prevent birds from flying into them.

ADMINISTRATOR'S REPORT:

Mr. Grant is working on finishing up the rain garden grant paperwork and the energy audit grant application. He hopes to have the Sustainable Jersey application completed by the next meeting, with the assistance of the Green Team. He announced the County Engineer will be marking out for a new radar speed sign at the end of the week, which will be moved slightly from its current location. The County's consultant is completing plans for the traffic calming measures and will submit to the Borough for final review. Hopefully the work can be bid in spring 2021. Mr. Grant is working on several items with the CFO including emergency debris removal contract, billing system for inspections, background checks on new hires, and financial options for unfunded balances in the utility. Lastly, the closeout documents have been submitted on the Ocean/Central/Pavilion grant. The Pearl Avenue project is not yet finalized, the contractor is still working on punch list. The valve GPS project is 25% complete and is expected to be finished in early 2021. Lastly, the Borough Engineer is working on putting together fees for the emergency services building so the grant application can be completed.

PUBLIC QUESTIONS ON AGENDA ITEMS:

Jeff Sowers suggested the Commissioners consider, when replying to the letter for support of wind farms, the fact that turbine blades have a finite life span and there is currently no recycling program for them.

Catherine Busch asked for an explanation and clarification on the first resolution regarding a grant application for the Cape May Point Science Center. Commissioner Mullock explained it would not commit the Borough to any expenses, but would allow the grant consultant to look into grant possibilities for turning St. Mary's into a non-profit nature and environmental center as he has mentioned at past meetings. Ms. Busch asked if the non-profit had been formed yet, to which Mr. Mullock responded that would take place after funds were identified and whether the Sisters would support it. Any grant would be for the non-profit formed, not the Borough. Ms. Busch asked if any environmental partners have signed on yet. None yet, but as soon as an agreement can be reached with Sisters, they'd be contacted.

Catherine Busch expressed reservations about establishing a new environmental or science center that would be in direct competition with other area centers for limited funding. She thanked Mr. Mullock for the explanation

Tom Maye asked how much money the grant would be able to provide. Mr. Mullock did not have figures at this time. That will depend on the application package submitted by the grant consultant. Mr. Maye appreciated the effort to save the building, but wondered whether this was the best approach.

Sandy Allison commented on the letter of support for wind power and suggested incorporating an educational aspect for residents such as having Orsted provide a Zoom presentation similar to the informational session on flood insurance.

Isabelle Neary asked Commissioner Mullock what figures the Sisters are looking for. Mr. Mullock did not have an answer for that, but didn't think they were looking for the biggest monetary return. Nor did he have a figure on how much total grant money is available. From his work on the Harriet Tubman Museum in Cape May, he is aware of many grant opportunities for these types of projects. The Sisters are looking to close in 2 years and he would like to be in a good position so nothing bad happens with the building.

Ed Tokarsky, Lincoln Avenue, asked if there was a timeline. The Sisters will be finished using the property in 2022.

APPROVAL OF MINUTES:

September 22, 2020 Work Session

October 8, 2020 Regular Meeting

October 27, 2020 Work Session

Motion to adopt: vanHeeswyk, Moffatt

Roll call: all in favor

ORDINANCES FOR INTRODUCTION/PUBLICATION: None

RESOLUTIONS:

119-20 Authorizing the Borough of Cape May Point to Submit an Application for a Rural Business Development Grant to the United States Department of Agriculture for the Cape May Point Science Center

Motion to adopt: Mullock, Moffatt

Roll call: all in favor

120-20 Authorizing the Disposal of Surplus Property
Motion to adopt: Mullock, vanHeeswyk

Roll call: all in favor

121-20 Approval of Bill List
Motion to adopt: vanHeeswyk, Moffatt

Roll call: all in favor

ORDINANCES FOR SECOND READING AND PUBLIC HEARING:

10-2020 An Ordinance Amending Borough Code Chapter 150 (“Zoning”), Article II (“Definitions”) and Article III (“Prohibited Uses”), to Make Swimming Pools a Prohibited Use in All Zones

Motion to open public hearing: vanHeeswyk, Moffatt

Roll call: all in favor

Frank Kurtz stated he felt the ordinance was a knee jerk response and asked if the Borough plans to prohibit anything that causes an issue rather than finding a solution. Mr. Kurtz quoted statistics from the EPA regarding water usage for watering lawns and asserted it would take the discharge of 1500 8-person hot tubs to equal the amount of sodium dichloride that find its way into the ground water as a result of people who water their lawn in a year. He felt the dumping of hot tub water on the ground poses no hazard to Lake Lily.

Tom Maye agreed with the previous speaker.

Mike Neary asked if the ordinances this one was based on were ever tested in court. Solicitor Russell was not aware of any action, but stated the Borough has the right to prohibit uses under the Municipal Land Use Law. The Planning Board reviewed the ordinance and found it consistent with the master plan. Thus, he felt it was legally sufficient and would withstand a challenge in court.

Mary Vanderhoof, 806 Cape Avenue, respectfully asked the Commissioner to take under consideration excluding hot tubs and spas from the ordinance, feeling they have a much lower environmental impact. They contain far less water than a pool and many newer ones have UV filtration that decreases the amount of chemicals needed. In addition, they are not just recreational, they have a therapeutic benefit.

Christine Stefanache, 515 E. Lake, agreed with the first speaker, and had been planning to put in a pool when they bought the property last year. She does not want to harm the community but felt this was done very quickly and did not allow enough time for her to get a permit before it went into effect.

Beth Rupp, 205 Knox, is interested in getting a spa for therapeutic reasons and would like to Borough to allow spas/hot tubs so people with physical ailments can have them. She suggested having a size or scale limitation.

Mary Kelly pointed out Lake Lily was misspelled in the first Whereas. Also, she felt the definitions for pool and spa were not clear, nor was that of accessory use. She felt the definitions should be clear so everyone can understand them. Solicitor Russell explained the definition is exactly from the Uniform Construction Code and all the definitions are the same for clarity. Ms. Kelly disagreed that it was clear.

When no one else wished to speak, the public hearing was closed. Commissioner vanHeeswyk made a motion to adopt Ordinance 10-2020. Mayor Moffatt would like

to amend the ordinance. Solicitor Russell explained a substantial amendment would require reintroduction. The motion to adopt died for want of a second.

During a motion to table the following ordinance, it was discovered that Commissioner Mullock had been disconnected and subsequently muted when he reconnected, thus he was unable to second the motion when he wanted to do so. Mr. Mullock explained he was in favor of adopting Ordinance 10-2020 at this time and then consider excluding spas and sending that to the Planning Board. Commissioner vanHeeswyk made a new motion to adopt.

Motion to adopt: vanHeeswyk, Moffatt

Roll call: Mullock and vanHeeswyk in favor, Moffatt against

11-2020 An Ordinance Amending the Borough Code by Adding New Chapter 108 ("Maintenance Requirements for Existing Nonconforming Swimming Pools and Spas")

Solicitor Russell explained this ordinance refers to pools being a prohibited use in Chapter 150, so adopting this wouldn't work. Commissioner vanHeeswyk made a motion to table the ordinance, seconded by Mayor Moffatt. On roll call vote, it was discovered Commissioner Mullock had been disconnected and subsequently muted, thus he was unable to second the motion to adopt Ordinance 10-2020. The motion to table ordinance 11-2020 was defeated as follows: Commissioners vanHeeswyk and Mullock voting no, Mayor Moffatt voting yes.

Motion to open public hearing: vanHeeswyk, Mullock

Roll call: all in favor

Kevin Casey was appalled by the foolishness that occurred on voting for 10-2020 and felt the ordinance should have been pushed to the new administration in January. Commissioner Mullock disagreed that there was "foolishness" involved, but rather it was a matter of technical difficulties that happen during remote meetings. Mr. Casey argued he wasn't speaking about the phone problem, but rather about the parliamentarian's advice. He went on to berate the Borough for using COVID-19 to hide behind teleconferencing and making no effort to move to video conferencing.

Mary Vanderhoof asserted water runoff and discharge are regulated through the Borough's Tier A MS4 permit and the wording in the ordinance come from NJDEP. In the NJDEP sample, dechlorinated swimming pool water is an acceptable discharge. She felt if the DEP has determined it is safe to discharge dechlorinated water, then the Borough should just require owners to allow chlorine to dissipate before discharging water rather than adopting this new ordinance that would be a hardship to pool owners. She wasn't aware of any Tier A municipalities that prohibit the discharge of dechlorinated swimming pool water. Commissioner Mullock stated

he had seen that in the ordinance and that he would like to table this ordinance and sent to the Planning Board for more review.

Sandy Allison commented the NJDEP and EPA write rules for larger towns where there isn't a precious resource like Lake Lily.

Christine Stefanache was disappointed the last ordinance was adopted and didn't know why it was.

Beth Rupp, 209 Knox, was excited to part of this process. She noticed that the original test about new pools and spas used the word "enjoyment". She wanted to point out therapeutic could be a way to allow them. Maybe there is a way to create something new for spas.

When no one else wished to speak, the public hearing was closed.

Motion to table: Mullock, Moffatt

Roll call: all in favor of tabling ordinance

12-2020 An Ordinance Amending Borough Code Chapter 113 ("Nuisances; Public Health") to Add New Article II ("Prohibitions against Bamboo")

Motion to open public hearing: vanHeeswyk, Moffatt

Roll call: all in favor

Dale Coleman asked if this ordinance was being tabled based on the October 26th work session discussion.

Denise Coleman, 206 Lehigh, agreed with the gentleman who thought a different system for meetings would be advantageous. She asked if the road department or any property owners have complained about significant damage as cited in section 113-5 of the ordinance. Mayor Moffatt affirmed that multiple residents have called with complaints about significant damage to their property. Ms. Coleman then asked if the Borough plans to adopt the ordinance tonight. Solicitor Russell explained that will be determined by roll call vote after the public hearing. If adopted, the ordinance would take effect 20 days after adoption. If someone was found in violation, code enforcement would issue a notice of violation and order to comply and the recipient would have 45 days to comply under the ordinance. If they don't, then the code enforcement could issue a summons. Any fine would be determined by the judge. Ms. Coleman asked for an explanation of C.3. Mr. Russell explained states people have the right, regardless of whether this ordinance is adopted or not, to take someone to court and the ordinance doesn't have any effect on that right. Denise Coleman asked if the Borough has done any research on whether this ordinance can be enforced based on the problems experienced in Linwood. Solicitor Russell quoted state statute that delegates power to municipalities to enforce matters to preserve public health, safety, and general welfare. Ms. Coleman stated she counted 9 properties that have bamboo and asked why no other invasive plants are

being banned. Mayor Moffatt stated the borough has only received complaints about bamboo. Commissioner vanHeeswyk has experienced a problem with bamboo encroaching on her yard from a neighbor. The ordinance would affect her too since that bamboo then spread to the next property over from hers. Still, she felt adopting the ordinance was the responsible thing to do.

Beth Rupp, 205 Knox, said she has bamboo. She wished people were able to just talk to their neighbors and do better as a community. She thought then litigation could be avoided. She then asked how long a person is responsible for bamboo after it is removed. It can spread and return after years. Mayor Moffatt thought was a reason to table the ordinance. Ms. Rupp is interested in complying and working with her neighbors.

Sandy Allison, 305 Alexander, said there are many properties with bamboo in town. She, herself, has been fighting it encroaching on her property. She felt it had to be addressed. Cape May and West Cape May are both working on a similar ordinance.

When no one else wished to speak, the public hearing was closed. Mayor Moffatt made a motion to table ordinance 12-2020. The motion died for want of a second.

Motion to adopt: vanHeeswyk, Mullock

Roll call: Mullock and vanHeeswyk in favor, Moffatt against

PUBLIC PORTION:

Mary Kelly was confused whether the adopted pool ordinance addresses pools that have permits but haven't installed a pool yet. Solicitor Russell explained anyone who obtains a permit before the effective date of the ordinance can install a pool even if it is after the effective date. They become existing, noncompliant uses. If they don't install before the permit expires, they would need to apply for a use variance. Ms. Kelly asked if the ordinance is referred back to the Planning Board, would the commissioners submit different regulations since the Planning Board already found this language consistent. Commissioner Mullock felt an argument could be made for allowing spas for therapeutic purposes and maybe limit them by size or the gallons of water they hold.

Beth Rupp, 205 Knox, thought the Borough could prohibit people from planting bamboo and other invasive plant. She felt people would comply and then the issue of how to eradicate could be addressed separately.

Catherine Busch had a comment on the bamboo ordinance but was unable to get into the queue. She discovered she had to first say she wanted to be removed from the queue and then press *6 again to get back in. Her thoughts on the bamboo ordinance were, she hopes it is enforceable. The Environmental Commission reviewed the ordinance and felt it is needed, but enforceability is a matter outside their jurisdiction. The ordinance does not prohibit neighbors from resolving it amicably. As an incoming commissioner, she would like to have the grants

consultant look for opportunities for grants to upgrade the Borough's tech to help with these remote meetings. Commissioner Mullock thanked her for her comments and congratulated her on being elected.

Mary Vanderhoof, 806 Cape, clarified a comment made during the public hearing on 11-2020. One called stated the NJDEP regulations are meant for larger towns, but that was not accurate. The Tier A designation is based on environmental sensitivity determination by the NJDEP. The NJDEP has determined the only impact on Lake Lily at this time is phosphates, and they come from fertilizer. She didn't want to see the Borough second guess the water quality scientists at the DEP. In light of the Commissioner considering excluding spas and hot tubs from the adopted ordinance, under the ordinance as adopted, would a homeowner be precluded from replacing a hot tub if it breaks down. Mayor Moffatt reported the Zoning Officer confirmed that a person would need a variance to replace an existing spa now that the ordinance has been adopted. Commissioner Mullock hoped the issue of spas could be resolved quickly. Commissioner vanHeeswyk thanked Ms. Vanderhoof for her knowledgeable comments. She was concerned that water drained from a hot tub would run across lawns and into the Lake Lily, carrying phosphates from fertilizer into it. Ms. Vanderhoof felt sure it could be done in a way to contain the water on the property since it would only be a few hundred gallons.

Connie Campanella repeated the process for final election results provided earlier by the Clerk to make sure she had all the facts correct.

When no one else wished to speak, the meeting was adjourned at 8:30 pm on motion of Commissioner vanHeeswyk, seconded by Commissioner Mullock.

Respectfully submitted,

Accepted:

Elaine L. Wallace, RMC, CMR
Municipal Clerk

Commissioner Mullock

Commissioner vanHeeswyk

Mayor Moffatt