

**AUGUST 25, 2020
WORK SESSION MINUTES**

The Work Session of the Board of Commissioners of the Borough of Cape May Point was called to order by Borough Clerk Wallace at 12:00 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' DISCUSSION (NEW BUSINESS/OLD BUSINESS)

Utilizing Engineer for Reviewing Development Projects: Commissioner Mullock thought it would be good to have the engineer review projects so he can be a resource for the enforcement and compliance people. The Borough's solicitor had advised that other towns use their engineer in that way. Administrator Grant explained the notion arose out of the current problem with a property under construction at Oxford and Lake where there has been ongoing problem with the installation of a pool and lack of enforcement actions. There were clearly some operation problems, but a lesson has been learned about better coordination of operations in the borough. Commissioner Mullock agreed a standard of oversight needs to be established to make future enforcement a smooth process. Having the engineer inspect the site at Oxford and Lake helped identify numerous issues. Commissioner vanHeeswyk explained the Borough does not have development projects, only single-family homes. She wasn't certain there is the ability under the Municipal Land Use Law or the Uniform Construction Code to add new laws about requiring Engineering review. Zoning Officer McGraw reaches out to the engineer only when he finds it necessary to have his expertise. Solicitor Russell suggested the Borough could name the engineer as an enforcement officer so he could be called in when necessary. Mr. Mullock suggested the Borough make it an expectation that the engineer would be called in on certain code enforcement matters and have money budgeted for that purpose in the future. Mr. Russell stated ordinarily costs like that should be covered by fees so they aren't funded by the taxpayers, but there isn't any escrow or other fee associated with these types of inspections. Commissioner Mullock suggested a resolution or motion to establish some type of fees or other budgeting. Commissioner Mullock made a motion, seconded by Mayor Moffatt, to explore budgeting for the engineer to assist code enforcement when necessary. The motion passed with Commissioner vanHeeswyk voted against the motion because it encroached on the Mayor's department.

Installation of Pools:

Commissioner Mullock noted the Borough has very high ground water, which poses problems for construction, particularly for pools. The high ground water makes it difficult to dewater. And the Borough simply cannot allow dirty water from dewatering to be dumped into Lake Lily, it should be cleaned before being discharged. The water also shouldn't go into the regular sewer system. In addition

to the problem of dewatering and ground water, pool water contains a lot of chemicals that would be detrimental to the lake. Solicitor Russell stated he has reviewed the master plan and zoning ordinance for context on this. The Borough's current ordinance is silent on pools, but a 1964 court case supported that a use not specifically referenced was an implied permitted accessory use. Mr. Russell didn't think it was the intention of the Borough to permit pools. He read aloud the portions of the conservation element of the master plan which encourages open space, room for privacy, vegetation, preservation of Lake Lily for fish and wildlife, among others. It is important to consider the master plan when contemplating zoning regulations. In addition, the Borough should consider the impact of pools on water consumption. Fresh water is a dwindling resource in this area. Another consideration is that a pool counts toward total lot coverage. Commissioner Mullock felt people should be aware that having a pool could limit other structures on the property. He felt the Commissioners need to consider all the aspects of a pool such as covering, draining, placement, whether to prohibit them entirely or just in the lowest areas. Mr. Russell stated some of the sample ordinances provided were very technical in nature.

Commissioner vanHeeswyk said the issues of pools as a permitted use has been discussed by various boards since 2017. What she didn't see discussed, and feels is the most important factor to consider, is the effect of pools on potable water, a dwindling resource. The aquifer used for the Borough's water source is becoming increasingly saline. Commissioner Mullock stated this is one of many reasons he'd prefer to see the Higbee's Beach wetlands project be established as a freshwater wetland instead of reverting it to saltwater. Commissioner vanHeeswyk stated years ago Pierre LeComb gave 7 recommendations on how to limit saltwater intrusion and secure the water source for 100 years, but to date no towns have moved forward on any of his expert recommendations. She was against using potable water for swimming pools and feels no one would use a shallow well because the water would be rusty. Mrs. vanHeeswyk also said she'd received many calls and emails about the subject and all but one didn't see why pools are allowed in Cape May Point. The person who was in favor of pools wrote a thoughtful letter, but the house in question is located in one of the lowest areas of town and she wondered if most people were even aware of how high their ground water is. Mayor Moffatt made a motion, seconded by Commissioner vanHeeswyk and carried unanimously, to send a letter to the Planning Board along with a draft ordinance for their consideration and recommendation.

Commissioner Mullock had no report.

Commissioner vanHeeswyk corrected information provided by an outside party on key contacts. Anyone with questions on construction site standards should contact the code enforcement office. The construction office only enforces the Uniform Construction Code and does not handle other complaints from the public.

Mayor Moffatt had no report.

ADMINISTRATOR'S REPORT

Ed Grant reported he met with the Beach Director and signs are posted that masks are required and taggers will be instructed to tell people they must wear mask when walking onto the beaches. Some people have suggested moving the taggers to the street-side of the dunes, but the Borough is opposed to that for safety reason, particularly since many taggers are underage and not everyone is pleasant when being given instructions. He has been busy with staffing and property maintenance issues of the last few weeks, as well as working on Sustainable Jersey actions for the upcoming deadline. He is hoping to be able to recommend bringing in a grant consultant on an as-needed basis at the next meeting. Lastly, he has done a review of revenue and capital projects and, overall, revenues are up this year and the Borough should finish the year strongly.

PUBLIC QUESTIONS ON AGENDA ITEMS ONLY None

RESOLUTIONS:

- 98-20 Authorizing Special Event Permit – Sowers
Motions: Moffatt, vanHeeswyk
Roll call: all in favor
- 99-20 Approval of Change Oder No. 2 for Ocean, Pavilion & Central Avenues Drainage and Road Project
Motions: Mullock, vanHeeswyk
Roll call: all in favor
- 100-20 Authorizing Special Event Permit – Tillery and Hassell
Motions: Moffatt, vanHeeswyk
Roll call: all in favor
- 101-20 Approval of Bill List

Motions: vanHeeswyk, Moffatt
Roll call: all in favor
- 102-20 Authorizing Special Event Permit – Civic Club
Motions: Moffatt, vanHeeswyk
Roll call: all in favor

PUBLIC PORTION:

Sandy Allison stated she originally reported problems at the construction site at Oxford and Lake back in February and something should have been done long before the pool became a problem. Ms. Allison also hoped that above ground pools will also be considered for regulation, not just inground. She also thought that existing pools should be regulated for water disposal and other things.

Marilyn Bergman asked if prohibiting pools will be considered by the Planning Board. She also said that chlorinated water from the pool isn't as bad as the backwater

water that comes out when cleaning a pool. That water should be handled as sewage, not put into the storm sewers. That is one of the most crucial things that must be regulated to protect Lake Lily, and she wanted to be sure the Planning Board will consider it. Commissioner vanHeeswyk asked her to also write a letter directly to the Planning Board with her concerns.

Kevin Casey said there are services that will bring water to fill a pool without having to use potable water. He also mentioned that Chapter 76 has mechanisms for site cleanliness, but that hasn't been enforced, especially at the Oxford and Lake site. He asked for commitment from the commissioners that it will be addressed. Mayor Moffatt said it will.

Jeff Sowers thanked the Commissioners for the approval of his permit. He then asked if a pool would be counted toward lot coverage like a garage or other structure. Commissioner vanHeeswyk confirmed pools are counted as lot coverage. She also stated she felt pools are different from other structures because they are a hole that collect stormwater, unlike a garage or shed where the water would roll off and go into groundwater. Mr. Sowers supported Mr. Mullock concept of a freshwater wetland at Higbee's Beach Wildlife Management Area. Lastly, he wondered how many people use potable water for their sprinklers. Commissioner Mullock reported the Borough has converted all its sprinklers to shallow wells, and a number of homeowners have done the same.

Stephanie Schrader thanked the Commissioners for their thoughtfulness for the environmental and their care of the residents. She and her husband recently purchased a home on Coral and would not have done so if they weren't told they could put in a pool. She cautioned that not only the environmental should be considered, but also marketability of the area. She asserted the prohibition of pools would be a nuclear option resulting from a single, poorly managed property. She urged the Borough not to let one bad apple ruin it for everyone.

Helen Chezem said someone put a pool in on Alexander Avenue a year ago and it wasn't pumped into the street. She felt the community should know where the water is being pumped, particularly in light of the high groundwater levels. Ms. Chezem also thanked Jeff Sowers and the Borough for the comprehensive beach entrance signs. She commended the lifeguards on St. Pete's for respectfully and skillfully handling repeat offenders who kept swimming outside the flags. Lastly, she advised Commissioner Mullock she has sent him an email and phone message. Mr. Mullock will check for the messages and respond.

Catherine Busch commended everyone on the thorough and interesting conversations about pools and the engineer and construction site standards. She hopes the essence can be conveyed to the Planning Board when asking them to weigh in on the matter. She felt it would be helpful to members who weren't listening to the meeting. Lastly, even if pools are prohibited, there should be rules adopted to

regulate existing pools not just with regard to discharge, backwash, draining, etc. but also matter that impact neighbors such as speakers, and lighting.

Chris McShane reiterated what Kevin Casey said about the work site at Oxford and Lake, which has been a problem long before the pool was started. She stated the pool is still draining and asked when it would be stopped. Administrator Grant said enforcement will be sent out again to inspect. Ms. McShane asked if the owner is getting fined for every day of non-compliance. Solicitor Russell explained that summonses are issued by the Borough, but only the Judge can decide on fines. Ms. McShane asked whether, if the engineer was called in sooner, he would have discovered the pool was larger than permitted. Commissioner vanHeeswyk advised the Zoning Officer did an inspection earlier, found that problem, and immediately advised the owner. Ms. McShane was upset the Borough allowed the problem to go so far. Administrator Grant stated the Borough has reviewed what happened and is working not only to resolve this site, but toward establishing protocols for the future. One issue was, the Borough was told the work would be finished in 48 hours, so the decision had to be made whether to stop the work or encourage them to finish in that time frame. When consulted, the neighbors agreed they should get it done rather than dragging on. The process was complicated by a storm. As a neighbor, Ms. McShane was very frustrated with how the matter was handled and hoped there would be closer monitoring in the future.

Jim Imbriaco, Cape Avenue, thanked the Commission for the productive discussion on the pool issue. He felt the complexity of the issue will take time for the Planning Board and Commission to work through. He asked if it would be possible to adopt an interim ordinance to temporarily suspend installation of pools until it is resolved. Solicitor Russell said he wasn't sure a moratorium was permitted, but the Borough could prohibit them while studying the matter and then revise the ordinance in the future.

Dan Lynch asked if the pool, as presently installed, conforms with zoning. Commissioner Mullock stated the owners were advised it had to be changed and he believed it had been, but it wouldn't be reviewed again until construction is completed. Mr. Lynch said he heard there were other things proposed on the site that were not accepted by the Zoning Officer and he wanted assurance that they won't be accepted or that the owner is required to go through the variance procedure. Solicitor Russell explained the owner will have to comply with zoning or get a variance, there is no other option. Commissioner vanHeeswyk explained that an as-built plan will be submitted and compared to what was approved. Anything that doesn't comply will not be accepted. Mr. McGraw did an interim inspection which is when he discovered the pool was being installed outside what was approved. Mr. Lynch asked if the concrete that was poured is in compliance with the approval. Solicitor Russell stated no one at the meeting could answer that questions. Mr. Lynch said Mr. McGraw declined to answer the question when he asked it. Mr. Lynch was also concerned that a precedent would be set and the

Borough would get a reputation for not enforcing its codes. He did not want to see that happen. The Commissioner agreed with him.

Mary Kelly gave the Borough kudos on the thorough, helpful and enlightening discussion. She agreed with Mr. Lynch that when contractors hear enforcement is lax, they take advantage. She also believed that carried on to the homeowners. Ms. Kelly asked if the Borough would be willing to pass a moratorium on pools pending Planning Board action. Solicitor Russell stated he would like to give advice to the Commissioners in confidence, not during a public meeting. Ms. Kelly asked what the process would be if the Borough wanted to pursue a moratorium, but Mr. Russell declined to answer.

Sandy Allison thanked the Commissioners for their patience and input, stating it was a wonderful meeting. She felt code enforcement has been lackadaisical and was appalled a stop work order couldn't be done right away.

When no one else wished to speak, the meeting was adjourned at 1:55 pm on motion of Commissioner Mullock, seconded by Commissioner vanHeeswyk.

Respectfully submitted,

Accepted:

Elaine L. Wallace, RMC, CMR
Municipal Clerk

Commissioner Mullock

Commissioner vanHeeswyk

Mayor Moffatt