

BOROUGH OF CAPE MAY POINT

Planning Board

Meeting Minutes

Wednesday, September 16, 2020 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: Mayor Moffatt, Mr. Greenberg, Mr. Keosky, Comm. vanHeeswyk, Mr. Casey, Mr. Hood, Mrs. Busch, Mrs. Leming, Mr. Murphy, Ms. Kelly, Mr. Sowers

Absent: Mr. Hood

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

Minutes

The minutes from the June 17, 2020 meeting were approved on a motion by Mr. Greenberg and second by Mr. Keosky. All present voted aye.

The minutes from the August 19, 2020 meeting were approved on a motion by Mr. Greenberg and second by Mr. Yunghans. All present voted aye.

Business

1. Hearing for Application PB2020-01: 415 Lincoln Avenue, Block 14 Lot 16.02
 - a. Applicant: Mr. and Mrs. Robert Bump
 - b. Application has been withdrawn.
2. Discussion regarding swimming pool regulations.
 - a. Mr. Greenberg summarized the Commissioners' request, noting that the ordinance sent was not numbered and the request is not for it to be reviewed for consistency with master plan, but they are requesting that the Board review it and provide commentary. Then they will proceed with enlisting professionals and follow the standard process of providing the Board a formal proposed ordinance for review.
 - b. Mr. Greenberg notes that swimming pools are not defined in section B. He recommends that any regulation defines "swimming pool", which he refers to as "permanent in nature and in ground", so it is separate from small wading pools and hot tubs. He also recommends regulation requires any pool water to be contained and disposed of on the owner's own property and provides a penalty for violation.
 - c. Mr. Van Embden summarized the standard process and what is being requested here. He suggested that any recommendations could be summarized and be sent in a letter to the Commissioners, pending memorialization of any resolutions at the next meeting.

- d. Mr. Casey disagreed with the suggestion made in the draft ordinance addresses regarding effect on vegetation since a pool is a structure that is held to the same zoning standards as a shed or other accessory structure, and therefore should not have any additional effect on vegetation or lot coverage. He also expressed concern about “jumping in” and making decisions regarding a topic that is being . Noted that all three example ordinances provided in the packet did not ban pools but strongly regulated them. He feels that one poorly run construction project should not because action based on reaction. Mr. Casey acknowledged that there are several letters from public on table for and against pools but feels residents have voted with their wallets in favor of pools and that must be considered as well.
 - i. Mrs. Worthington reminded the Board that the resident letters were forwarded to the Board members but cannot be read or otherwise represented in the meeting. Members of the public must be present to be sworn for their opinions to be on record.
 - ii. Mr. Keosky asked what Mr. Casey meant by “voting with their wallets”. Mr. Casey said that these residents have installed a pool or paid a premium for a home with a pool which he feels counts as an affirmative vote for pools.
- e. Mr. Yunghans asked how many pools are currently in the Point, not under construction. Mr. Casey stated he believes there are five, with the Oxford property pool being the sixth.
- f. Mr. Yunghans asked if there has been issues or environmental concerns with any of the existing pools. Mrs. Busch stated that no one is monitoring them so we cannot be sure. Mr. Yunghans summarized that the Borough only knows about an issue when one arises; Mrs. Busch agreed since they are not being regulated.
- g. Mr. Yunghans asked Mrs. Busch to summarize the report created by the Environmental Commission, which was distributed to the Board members for review. She summarized that the report was created 3 years ago at the request of the Planning Board at the time. Many of the concerns identified in the report relate directly to the recent discussions regarding pools. She noted the report addresses de-watering, permeability and lot coverage, noise and light disturbance, large group gatherings, flooding, covering of pools in off season, and filling and emptying pools. She noted that the EC has no position in the argument, but individual members may have had strong opinions.
- h. Mr. Sowers asked for confirmation that the Commissioners were asking the Planning Board to identify the planning concerns but not weigh in whether they were for or against the draft ordinance. Mr. Van Embden indicated he was not pleased with the format of the request. He noted that he did not received a copy of the draft ordinance with his package. Mr. Sowers summarized that the draft proposes a position which he personally agrees with but thinks that all should follow Mr. Greenberg’s lead and identify what needs to be addressed in regulation. He noted that he agrees with the need for definition, and also provide specifics to deal with all the issues that Mrs. Busch shared.
 - i. Mr. Van Embden noted that a definition would be necessary, but many of the concerns expressed would exist with an above ground pool too. The Planning Board can recommend regulating pools instead of the ban that was drafted, as prohibiting them could be challengeable in regard to property owner rights.
 - ii. Mrs. Worthington resent the file during the meeting for his review.
- i. Mr. Casey noted that items such as lighting and speakers are hard to associate only with pool and that he feels if it is being proposed that pools are to be banned, he must advocate for a thorough discussion into the topic. He also noted that a few years ago there was discussion regarding older individuals having difficulty getting in and out of the water at Cape May Point, so telling those individuals they cannot have a pool is not well reasoned.
- j. Mr. Van Embden stated that although there are many superficial aspects to the pool discussion, he does not feel that concerns about the water table can be overlooked.

- k. Mr. Casey pointed out that once pools are constructed most of the concerns are a moot point. He suggested that the Borough look at the construction aspect to make sure that pools are not poorly constructed.
- l. Mr. Sowers stated that it appears the only available choices appear to be to ban pools or strictly regulate them.
- m. Mr. Greenberg responded to Jeff and clarified that the Board should only comment on the draft presented since that was all that was asked. He asked Mrs. Busch for her opinion.
 - i. Mrs. Busch agreed with Mr. Greenberg regarding suggested course of action.
 - a. Based on ERI, most areas range from 1ft – 5 ft groundwater depth, indicating that in some areas of the Point de-watering is almost impossible.
 - b. Based on size of lots in Cape May Point, pools are just not conducive to the space available.
- n. Mr. Casey suggests creating a subcommittee or reply with a letter that the Board is not ready to provide response.
 - i. Mr. Casey made a motion to create a subcommittee to review the request which was second by Mr. Murphy.
 - a. Mr. Greenberg indicated he disagreed with the motion.
 - b. Mr. Casey withdrew his motion.
- o. Mr. Van Embden stated that a Planning Board is advisory and therefore can provide a response in that capacity. The Board is not in the forum of discussion and public comment, which should properly be addressed in the forum of the township committee.
 - i. Mr. Casey stated that the letter specifically requests the Board to indicate if pools should be allowed and if so provide suggested regulation comments, not necessarily comment on the draft ordinance provided written by Mr. Russell.
- p. Mr. Greenberg suggested the Board return a letter stating that the Board is not prepared to provide a decision, but the Commissioners should proceed if they feel it is appropriate.
- q. Ms. Kelly thinks that the letter received from the Municipal Clerk misrepresents what happened at the Borough meeting. She said her initial reaction to the request was like Mr. Casey, however, she was not aware of the environmental impact of pools. She thinks there is a need for discussion and review, but indicates she was bothered that there was no action to the EC report when issued previously.
 - i. Mrs. Worthington stated she would direct Ms. Kelly to the minutes associated with the previous discussion for her review.
- r. Mr. Keosky noted that he is against pools within the Borough. He feels there are three areas that need to be addressed: (a) people with current permit approval, (b) people rushing to get a permit approval, (c) and people with existing pools. He also stated considerations are needed for small “kiddie” pools.
- s. Comm. vanHeeswyk reference the article from the Herald, which was distributed to Board members, regarding water usage. She noted that a primary concern is the appropriate use of potable water.
- t. Mr. Murphy believes enforcement will be an issue as it often is in this town due to part time enforcer. If the regulation will not be enforced he thinks banning is appropriate.
 - i. Mr. Casey said that the enforcement should be easy and the fact that it is not should be a reflection on the means of enforcement, not a reason to ban something.
- u. Mr. Greenberg stated he supports the banning of pools. Mr. Greenberg stated that everyone seems to have valid reasoning for their position on this topic. He suggested a poll of the Board to see where members stand.
 - i. Poll was not possible due to motion on the table by Mr. Casey.
 - ii. Mr. Casey withdrew the current motion but proposed another motion indicating that the Board needed more time to review the request and respond with recommendations as per the second paragraph of the letter to the Commissioners.

- a. The motion failed for lack of a second.
- v. Comm. vanHeeswyk quoted an article to Mr. Casey about potable water sources. Mr. Casey feels that a requirement to obtain water from outside source should be part of the regulation and would address that concern.
- w. Mr. Greenberg asked Comm. vanHeeswyk if all three Commissioners voted to send this information to the Board for review. Mayor Moffatt and Comm. vanHeeswyk confirmed all three voted in the affirmative. He said that he feels that anything sent from them was well reasoned and thoroughly thought through and that he would be comfortable returning the document sent with some suggested modifications.
 - i. Mrs. Busch agreed with Mr. Greenberg that the Board should return comment to the Commissioners with some suggested modifications but indicate they should proceed with their plan. She stated that Council meetings was where public comment should occur and if the Board chooses to investigate further as a subcommittee or as private citizens in the interim, but it is not the Board's responsibility to decide what should and shouldn't be prohibited.
- x. Mr. Van Embden stated that the public letters should not be distributed to the Board members for consideration. Mrs. Worthington misunderstood and apologized for distributing.
- y. Mr. Casey referred to what was requested in the letter from the Municipal Clerk, requesting recommendations and not a rewrite of the ordinance.
- z. Comm. vanHeeswyk clarified what the Commissioners were requesting. What was sent was a draft ordinance amending Borough code 150-4, item v. There was discussion about whether or not this was a draft for formal review.
 - i. Mr. Van Embden indicated that the information was being requested with inadequate time for that review but a more information review and response would be appropriate.
- aa. Mr. Keosky suggested a motion that the Planning Board agrees with ban of future pools, and that the Board is not comfortable with the draft ordinance and thinks a subcommittee should be formed to look at regulation regarding maintenance and control of existing pools.
 - i. Mr. Casey asked the motion be broken into two motions.
 - ii. Mr. Van Embden expressed concern about language in the motions made by Mr. Keosky.
 - a. The Board is not banning pools but is endorsing the recommendation of banning them. Mr. Keosky agreed.
 - b. The Board does not assume the responsibility for putting language in the ordinance. Mr. Keosky asked how motion should be rephrased. Mr. Van Embden suggested that the Board recommend that Council "flush out" the details for existing and permitted pools. Mr. Keosky agreed that was his intended motion.
- bb. Mr. Keosky made a motion for the Board to return comment that they endorse the ban of future pools; Mr. Sowers second. All present voted aye except Mr. Casey.
 - i. Mr. Murphy stated he voted for banning the pools due to anticipated lack of enforcement.
- cc. Mr. Keosky expressed concern about this ban including kiddie pools, which was not his intent.
 - i. Comm. vanHeeswyk indicated that the point is well taken and will be considered.
 - ii. Mr. Van Embden indicated the resolution would include this and all concerns discussed.
- dd. Mr. Keosky made a motion for the return comment to note that the ordinance would need to be flushed out with detail and regulation which addresses existing pools and those constructed by permit prior to the adoption of an ordinance banning them; Mr. Yunghans second. All present voted aye.
- ee. Mr. Van Embden confirmed that he would draft a letter on behalf of the Board that would be forwarded to the Commissioners, pending adoption of resolutions memorializing the Board's vote at the next scheduled meeting.
- ff. Comm. vanHeeswyk and Mayor Moffatt thanked the Board for their recommendation and Mr. Van Embden for his guidance.

3. Mr. Sowers asked about use of a generator at a construction site on Pearl Avenue. Indicated that there was a power pole set up that was not connected, so the contractor appeared to be using a noisy generator instead.
 - a. Comm. vanHeeswyk thanked him and said she would address.

Board Information

1. Mrs. Worthington reminded Board members that early registration for this year's virtual League of Municipalities Conference was open, and requested response from those interested in attending by Friday, September 18. Ms. Kelly confirmed she would be attending.

Public Comment

1. Public comment was opened at 8:21 pm on a motion by Mrs. Busch and second by Comm. vanHeeswyk.
2. Ms. Sandy Allison – 305 Alexander Avenue CMP
 - a. Expressed concern about breeding mosquitoes in kiddie pools and suggested they are included in regulation. The EC has recently spent significant time eradicating mosquitoes, particularly the Asian Tiger mosquito.
3. Public comment was closed at 8:24 pm on a motion by Mr. Greenberg and second by Comm. vanHeeswyk.

Adjournment

The meeting adjourned at 8:25 pm on the motion by Mr. Greenberg. All present voted aye.

Respectfully Submitted by:

Rhiannon Worthington

Board Secretary

Approved by Board 10/XX/2020