

MAY 11, 2023
REGULAR MEETING MINUTES

The Regular Meeting of the Board of Commissioners of the Borough of Cape May Point was called to order by Clerk Wallace 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 Busch and Commissioner vanHeeswyk answered roll call. Also in attendance: Administrator Ed Grant, Clerk Elaine Wallace, and Solicitor John Amenhauser. This meeting was held electronically via ZOOM under local operation guidance from the NJDCA pursuant to P.L. 2020, c.11.

COMMISSIONERS' REPORTS:

Commissioner Busch reported public works supported the Taxpayers Association volunteer event at Pavilion Circle the previous weekend. The borough purchased and delivered mulch. She also advised there had been several reports of lights out at the circle. The lighting requires special bulbs that had been on backorder for some time. Public works is still prepping for the summer season. Lastly, she announced hydrant flushing would be conducted May 22-24. She encouraged property owners to register for the borough's email alert system, which will send a notification once the flushing has been completed.

Commissioner vanHeeswyk reported the auditors will begin the annual audit the following week. The state pushed back the deadline for 2023 to late September.

Mayor Moffatt reported beach tags sales have been brisk. He then thanked the Environmental Commission for helping achieve the necessary components to continue working with the Mayors Monarch Pledge. He also thanked them for putting together a summary of electric vs. gas leaf blowers, which will be posted on the borough's website. He stated the information is good for starting the conversation but no action would be taken at that time.

ADMINISTRATOR'S REPORT:

Administrator Grant has been working on several bids including electric and natural gas cooperatives and the borough's trash and recycling bid specifications. The borough has begun looking into identifying sump pumps that are hooked into the sanitary sewer system and getting them to come into compliance with borough ordinances. Lastly, the borough has been receiving questions about the enforcement of deed restrictions in relation to the Cape May Point Science Center. He asked John Amenhauser to report on the topic.

Solicitor Amenhauser explained a deed restriction is an agreement between 2 parties – the buyer and seller of the subject property – and as such, can only be enforced by the parties to the agreement. In the case of the Science Center, the Sisters of St. Joseph imposed the deed restriction, so only they can enforce it. If communications continue regarding the matter, the answer will continue to be that the borough cannot enforce the deed restriction.

PUBLIC QUESTIONS ON AGENDA ITEMS: None

APPROVAL OF MINUTES:

April 25, 2023 Work Session

Motion: vanHeeswyk, Moffatt

Roll call: all in favor

ORDINANCES FOR INTRODUCTION/PUBLICATION:

05-2023 Amending and Supplementing Chapter 142 “Vehicles and Traffic” of the Code of the Borough of Cape May Point to Prohibit Exhibition Driving

Second Reading/Public Hearing/Adoption – June 8, 2023 at 6 pm

Motion: vanHeeswyk, Moffatt

Roll call: all in favor

RESOLUTIONS:

63-23 Authorizing Execution of a State Aid Agreement with New Jersey Department of Environmental Protection for Fourth and Fifth Beach Renourishment Cycles

Motion: vanHeeswyk, Moffatt

Roll call: all in favor

64-23 Authorizing Special Event Permit – Caitlyn Duhon

Motion: vanHeeswyk, Moffatt

Roll call: all in favor

65-23 Declaring the Official Opening Date of the Cape May Point Beaches to Bathing and Fishing for 2023 Season

Motion: Moffatt, vanHeeswyk

Roll call: all in favor

66-23 Appointing Interim CRS Coordinator and Floodplain Administrator

Motion: vanHeeswyk, Moffatt

Roll call: all in favor

67-23 Approval of Bill List

Motion: vanHeeswyk, Moffatt

Roll call: all in favor

ORDINANCES FOR SECOND READING AND PUBLIC HEARING:

04-2023 Ordinance Appropriating \$167,134.08 from the Capital Improvement Fund for Beach Renourishment

Motion to open public hearing: vanHeeswyk, Moffatt

Roll call: all in favor

Ed Tokasky asked for elaboration. Commissioner vanHeeswyk explained the bill was for two previous renourishments, one dredge and one backpassing, but NJDEP is only now billing for them. This ordinance would enable the payment.

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

Motion to adopt: vanHeeswyk, Moffatt

Roll call: all in favor

PUBLIC PORTION:

Jim Imbriaco thanked the borough for the long-awaited traffic calming on Cape Avenue. He said the impact was already noticeable.

Ed Tokarsky asked if there were specific issues that resulted in the earlier comments on the deed restriction at the Science Center. Administrator Grant explained the borough received much correspondence concerning enforcement of the deed restriction. As a result, the borough solicitor was asked to research the matter and provide clarification at this meeting. Mr. Tokarsky asked if there was a conflict between the deed restriction and zoning. At this time, there was not.

Hope Luken clarified that if the Sisters didn't enforce the deed restriction, then it was just up to the purchaser to adhere to it. Solicitor Amenhauser agreed that only the Sisters have the ability to enforced the restrictions. Ms. Luken then asked how the property was zoned and if it could operate as a hotel. Mr. Amenhauser did not have the information in front of him to be able to answer. Ms. Luken asked him to look into it and report at the next meeting. Mr. Amenhauser explained he is not retained by the public nor does he report to them directly. The information is available to the public to read and research. If the zoning if violated, then the borough would act to enforce. Commissioner vanHeeswyk explained the borough was zoned residential and the Science Center was a preexisting nonconforming use. Under zoning, the property could have continued to be used in the same way it was as St. Mary's by the Sea.

Jim Imbriaco wondered if it was possible to argue the community was a third party beneficiary to the agreement. John Amenhauser advised him he should seek counsel, since he only served as counsel to the borough commission. Mr. Imbriaco said he was just wondering if it was considered when Mr. Amenhauser was forming his opinion and said he would send a case to him to look at.

Hope Luken asked if the Science Center could be used as an event space. Mr. Amenhauser again referred her to the zoning regulations. He also said the deed restriction is available online through the county clerk's office.

When no one else wished to speak, the meeting was adjourned at 6:27 pm on motion of Commissioner vanHeeswyk, seconded by Commissioner Busch.

Respectfully submitted,

Accepted:

Elaine L. Wallace, RMC, CMR
Municipal Clerk

Commissioner Busch

Mayor Moffatt

Commissioner vanHeeswyk