

**BOROUGH OF LONGPORT COMMISSION WORKSHOP MEETING  
MUNICIPAL BUILDING, 2305 ATLANTIC AVE  
LONGPORT, NJ 08403  
THURSDAY, June 27, 2019 – 8:30 AM**

Meeting was called to order and Municipal Clerk Kyle read the Opening Statement pursuant to the Open Public Meetings Act. *\*This meeting was advertised on June 20, 2019 in the Press of Atlantic City, to allow for Official Action to be taken on Ordinance O2019-11, "An Ordinance Authorizing Execution of a Deed of Dedication and Perpetual Public Access to Tidal Waters in the Borough of Longport, Atlantic County, New Jersey," including a second reading and public hearing.*

ROLL CALL:	Nicholas Russo	present
	James P. Leeds, Sr.	present
	Daniel Lawler	present

Engineer Carter, Solicitor Agnellini, Chief Culmone, CFO Kelly, Tax Collector Tomassi, and Municipal Clerk Kyle also in attendance.

Mayor Russo emergency exits and public comment announcement.

Mayor Russo stated that Solicitor Agnellini wished to comment on Ordinance O2019-11, "An Ordinance Authorizing Execution of a Deed of Dedication and Perpetual Public Access to Tidal Waters in the Borough of Longport, Atlantic County, New Jersey" prior to the second reading and public hearing.

Solicitor Agnellini explained that the New Jersey Department of Environmental Protection (NJDEP) requires a municipality to have an approved Municipal Public Access Plan before it (NJDEP) will issue a general beach maintenance permit under the Coastal Area Facilities Review Act (CAFRA). He explained, that the borough needs a general beach maintenance permit to clean the beach and move sand. He explained that the borough's permit expired last summer. Solicitor Agnellini noted that the borough applied for a new general maintenance beach permit and that the NJDEP denied it because the borough's Municipal Public Access Plan (MPAP) had not been approved. He added that there has been discussion back and forth for approximately a year with the NJDEP over the Municipal Public Access Plan. He explained that the MPAP provides the public with access to the beach and tidal waters. Solicitor Agnellini further explained that he did not believe that public access was a problem in the borough and that the public access points in the borough had been previously approved by the Army Corps of Engineers (ACOE) with the dune project. He noted that the borough's initial position was that the Municipal Public Access Plan was not necessary. He explained that NJDEP did not agree and reiterated the need for the Municipal Public Access Plan. He explained that the borough is now engaged in discussions with NJDEP on the Municipal Public Access Plan. Solicitor Agnellini added that the draft plan states that the borough will not deny the public access to the beach and describes access points in the borough. He added that another requirement of the MPAP is the need for an ordinance for signage to be placed at access points. He added that the ordinance was passed at a previous meeting. Solicitor Agnellini also pointed out that the Municipal Public Access Plan also requires an easement to be granted to the State over street ends for perpetual public access to the beach and tidal waters. He discussed that the granting of the easements has been in the process of being negotiated with the NJDEP for the past

several months. Solicitor Agnellini explained that he did not believe the borough could grant an easement over dedicated street ends to the State. He noted that the State disagrees with the borough, and that the State's legal department stated that the borough can legally grant the easement.

Solicitor Agnellini then discussed the notice provided regarding the easement ordinance and noted that the ordinance had been published in full a total of three times in the Press of Atlantic City. He further explained that the ordinance had been postponed due to changes received from the NJ DEP or borough changes. He stated that recently he has received input from several residents about the granting of the easement, as well as their concern that this has not been well publicized, which he did not agree with. Solicitor Agnellini noted that the ordinance was properly presented, disclosed and published. He recommended that the governing body withdraw this ordinance and present a new ordinance for introduction at the next meeting (7/24/2019) and start the process over. He discussed revisiting some earlier drafts of the ordinance for consideration. He explained that the State is requiring this ordinance because there had been a few municipalities in the northern section of the State that had vacated paper streets to eliminate public access. He explained that he was not aware of the borough having any plans to vacate any of its streets. He discussed that the borough initially had proposed an ordinance that would require any street vacation to notice or be first approved by the NJ DEP, which the State did not approve. He also suggested that the NJ DEP have the legislature propose legislation that would restrict a municipality's ability to vacate streets that provided access to beaches or tidal waterways. The State noted that it is working on this type of legislation and there is a bill that codifies the public's right to access under the Public Trust Doctrine. According to Solicitor Agnellini, this new law allows the NJ DEP to require what both the signage and easement ordinances pertaining to protecting the public's right to access the beach and tidal waterways through a Municipal Public Access Plan. He discussed that without an approved Municipal Public Access Plan, the borough can't get a general beach maintenance permit which allows the borough to maintain the beach. Without maintenance the beach could become unsafe, which could ultimately require that the beach be shutdown. He explained that some access areas became unsafe and the borough was able to get an emergency permit to clean the access areas. He also noted the NJ DEP could issue the borough a violation for cleaning debris on the beach without said plan or permit. He also discussed that the next issue for the borough to address is the fish and wildlife component.

Engineer Carter discussed that there is also a NJ Division of Fish and Wildlife component included as part of the beach maintenance plan and that there is a fish and wildlife component that must be included in the plan that could possibly require that portions of Longport's beaches be closed off to the public for wildlife protection including Piping Plovers nesting areas. He added that the State is taking the Federal component of Fish and Wildlife and incorporating what is has as recommendations as part of the State's requirements. Engineer Carter noted that the borough could not accept those conditions of closing down sections of the beach (including 11<sup>th</sup> to 13<sup>th</sup> avenues), adding that they must remain open to the public. He noted that he discussed the State's requirements with Margate officials who will also need to address the same requirements when the city applies for its beach maintenance plan and he suggested that Longport enter into a shared services agreement with Margate to have a consensus on how to address the NJ Division of Fish and Wildlife requirements. Engineer Carter noted that the borough has 10 emails regarding the Point area requesting to add parking in that area and develop the area, make it safer, but he further explained that the NJ DEP noted that it would deny any permit the borough would submit to develop it. He noted that another representative of the NJ DEP was asking why it (the Point area) wasn't included in the plan. Engineer Carter responded that the NJ DEP would not allow it, further noting that there appears to be a lack of communication within the NJ DEP. He was also concerned that members of the NJ DEP were changing what the borough was stating. Engineer Carter noted that the

borough could address the Fish and Wildlife component, by stating 'if and when those conditions arise' the borough could then address any wildlife and vegetation on the beach. He, again, recommended entering into an interlocal shared services agreement with Margate to address the Fish and Wildlife component of the plan.

Mayor Russo noted that the most practical way to address these requirements is by ordinance with language that both agencies (Longport and the NJ DEP) can accept. Mayor Russo asked if any other municipality has an ordinance that has addressed this issue. Solicitor Agnellini did not believe there was a municipality that had. Mayor Russo explained that the borough commissioners are tasked with choosing what is right for the greater good, which he added includes providing public beach access. He added that the borough has accepted State and Federal funds for beach protection. He added that there must be an ordinance that can address the concerns of the borough and the State. Solicitor Agnellini discussed an ordinance that had been drafted that would require NJ DEP notice/approval prior to any vacation of a street end, but it was not acceptable to them. Solicitor Agnellini explained that there is still the NJ Division of Fish and Wildlife component that must be addressed by the borough. He noted that the permits have a five year cycle and that borough's expired last year. He explained that the borough initially approached Margate and Ventnor and met with officials to see if the cities would be interested in joining Longport in submitting its beach maintenance permit application, but they wanted to wait to see what Longport's experience would be first. He noted that Margate will be addressing the same issue soon. Solicitor Agnellini explained that he and Engineer Carter have been working together on the permit to keep the costs to a minimum. He suggested that Longport consider hiring an outside consultant to address the NJ Division of Fish and Wildlife component. Engineer Carter stated that the information is available regarding the fish and wildlife component, as Sea Isle City has addressed this already. He added that it requires a lot of typing and that Longport should go into a shared services agreement with Margate to complete this task.

Mayor Russo asked Commissioners Leeds and Lawler if they had any comment before he makes a motion to withdraw the ordinance.

Solicitor Agnellini noted that in an email he received there is the suggestion that the Comm. Leeds is opposed to the easement ordinance. Comm. Leeds noted that he is prepared to discuss his position if needed. Comm. Leeds questioned what the beach maintenance permit allows the borough to do - clean the beach and move the sand? Engineer Carter discussed what the permit allowed the borough to do. Comm. Leeds shared his concern about sand blowing up against the bulkhead from the dunes. He stated that it should not be the borough's responsibility to move this sand. He further explained the contradiction that the borough needs to move the sand, but can't move it without an approved permit.

Engineer Carter discussed the dedication of a road. He explained that the dedication gives a municipality the ability to build roads, and sidewalks for the public, etc., but he further explained, if it is deemed no longer needed for public purposes, that is when it can be vacated. He noted that some bayfront property owners have approached former commissions with requests to vacate that the street ends. Solicitor Agnellini noted that there are two levels of ownership of a dedicated street- the original owner that created the paper street or adjacent property owners, the second level is with the municipality, until it is deemed unnecessary for public purposes. He explained that he could not foresee beach access street ends vacated, but there could be, in theory, bay side streets vacated. Solicitor Agnellini noted that a borough bayfront property in the past did have the street end vacated, but he could not foresee any streets being vacated in the near future. Although, he said in theory some bayfront properties could have street ends vacated.

Comm. Lawler noted that the issue now is for the borough to be able to access the beach for maintenance and that it is a safety issue. He added that he is concerned that the NJ DEP could fine the borough and/ or shut the beach down. Solicitor Agnellini added that the borough could be fined, but he did not think the NJ DEP would shut the beach down. Comm. Lawler noted that now it might be possible for the borough to get Margate on board since their permit will expire soon and it might be beneficial having two municipalities approach the NJ DEP. Solicitor Agnellini noted that the State has been working with Longport, but they could start fining the borough if it does not show progress in passing the easement ordinance.

Comm. Lawler discussed his understanding of the dune project is that part of the agreement regarding the dune project requires that borough maintains the dunes. Engineer Carter noted that the dune agreement with the State of NJ, the borough has to maintain the dunes. Engineer Carter asked Solicitor Agnellini, noting that the delay of the permit has been due to subjective review, if it would be wise to send the beach maintenance plan back via certified mail to the NJ DEP to have it conditionally approved, noting that it was not a statutory requirement. He noted that any fines would be administrative, not statutory. He strongly suggested that the NJ DEP is delaying the permit, and that borough is trying to comply by responding to all their comments. He explained that the borough might have to pay another \$1000 permit application fee.

Mayor Russo stated that commission should defer to Solicitor Agnellini on the borough's next steps in this process. Solicitor Agnellini discussed the process of the approval of the Municipal Public Access Plan, adding that the plan ultimately requires a change to the borough's Master Plan. He noted that the initial ideas was the borough was going to request conditional approval once the easement ordinance had been approved.

There was discussion on removing the davits from the beach. Solicitor Agnellini noted that if he could prove that the davits were there prior to the dune project, the NJ DEP would be OK with leaving them there without a CAFRA permit application. It was noted that it was previously decided as a past commission meeting that the davits would be removed. Engineer Carter noted that he thought that the Army Corps of Engineers plan might have shown the davits on it, adding that the Army Corps was going to reinstall them, but the borough declined at that time as it needed to consult with the new beach patrol chief as to location. Comm. Leeds noted that Google Maps might show the past location of the davits. Solicitor Agnellini explained that the davits are the pilings that lifeguard boats were stored on and that they had to be removed for the dune project, but he added, that the Army Corps was going to reinstall them. He added that the NJ DEP is now requiring a CAFRA permit for the davits. Solicitor Agnellini noted that the davits are not currently being used because of the size of the beach. Comm. Leeds noted that some have been pulled out and the pilings and crossbeams are piling up between 35<sup>th</sup> and 36<sup>th</sup> street and are being covered with sand. Comm. Lawler noted that he would have public works look into this.

Mayor Russo made a motion to withdraw O2019-11, "An Ordinance Authorizing Execution of a Deed of Dedication and Perpetual Public Access to Tidal Waters in the Borough of Longport, Atlantic County, New Jersey," seconded by Comm. Lawler.

Roll Call Vote: Mayor Russo – Yes. Comm. Lawler – Yes. Comm. Leeds – absent.  
Two Ayes. One Absent. Motion Carried.

## **MAYOR RUSSO**

Mayor Russo discussed that the Planning/ Zoning Board is concerned about the use of herbicides such as RoundUp getting into the water, and the borough would like to oppose the use of these types of herbicides in the borough. He asked Solicitor Agnellini what steps would the borough be permitted to take to address this concern. Comm. Lawler is concerned as the borough is a barrier island, which is different than pesticides/herbicide use on the mainland, as these toxic chemicals can access storm drains and water ways. Engineer Carter explained that the borough is responsible for anything that goes into the storm drain via the storm water permit. Solicitor Agnellini questioned if there is a list of chemicals that are prohibited from going into the storm drain. Engineer Carter noted that there were regulations under storm water regulations. Solicitor Agnellini noted that this list of chemicals could be used to draft an ordinance around. He discussed the parameters of a potential ordinance. Comm. Lawler noted that there are some green products out there that are less toxic than others. Engineer Carter also suggested sending a letter to landscapers to see what products are being used and he also suggested the possibility of xeriscapes. Engineer Carter noted that the NJ DEP should consider regulating the use of herbicides/ pesticides on barrier islands. Mayor Russo requested the clerk do some research regarding this issue. Solicitor Agnellini suggested starting with the list of chemicals and reaching out to local landscapers.

Mayor Russo discussed developing a policy for borough facility use by for project organizations/ individuals. He noted that historically use has been by non-profit agencies and individuals, but that the borough is receiving more requests from for-profit agencies to use borough hall facilities. Comm. Leeds noted that he enjoys seeing the use of the basketball courts by children, but was concerned if a fee was being charged for the clinic or camp. Comm. Lawler was also concerned by any fees being charged for use of borough facilities. Engineer Carter discussed other towns having a recreation director to handle these types of requests. Solicitor Agnellini noted that there is a process in place for use of the Community Building, adding that it is the only building that has a formal process for use, including a hold harmless and a certificate of liability insurance requirement. He discussed various instances of different requests for use of borough facilities. Mayor Russo noted that there are other facilities in the borough that could hold for profit events. Engineer Carter noted that there are potential security issues involved.

Solicitor Agnellini asked the governing body if it wanted to restrict borough facility use to not-for-profit usage only. Mayor Russo requested that Solicitor Agnellini draft a policy for borough facility usage.

## **COMMISSIONER LEEDS**

Comm. Leeds noted that a contractor on borough property was blowing debris into the storm drains. Comm. Leeds said he would be willing to sign a citation against this company who is doing work for the borough. Comm. Lawler noted he would talk to public works to provide a warning to the contractor. Solicitor Agnellini suggested talking to the contractor or sending a letter.

Comm. Leeds discussed the July 4<sup>th</sup> Mile Run, also adding that he had heard complaints about changing the route from the Memorial Day Parade, but he noted the need to inform the public about the change in the American Mile race route. Mayor Russo noted that the race will start and stop in the same location. Mayor Russo also discussed that changing the parade route had an impact on the Memorial Day parade, adding that he noticed a reduction in participation.

Comm. Leeds also discussed that he, Mr. Garcia and CFO Kelly were recently interviewed by a bond rating agency, Standard and Poors, and the borough has a bond rating of AA+. He also noted that there are more items to discuss at a future workshop.

### **COMMISSIONER LAWLER**

No further report.

### **ENGINEER'S REPORT**

Engineer Carter discussed Atlantic Avenue – that there is a NJ Department of Transportation grant project to start in September, he added that there will be no work on 29<sup>th</sup> Avenue during the summer, that he is working on the well #2 permit, is working on a sewer project that is part of the bond at 22<sup>nd</sup> – 27<sup>th</sup> avenues, and working on a new bulkhead at 36<sup>th</sup> Avenue (ocean side). Engineer Carter also discussed 9-1-1 and the address map, adding the borough does not have a Master Address Map (only one from the 1949). However, he noted that emergency management has an obligation to provide new address to EMO and that the statute references a map.

Comm. Leeds also discussed a community garden planting workshop and noted that a local garden center provided a very generous donation for the garden and thanked the community for planting the garden. Mayor Russo noted that he wanted to prepare a proclamation to thank the center for its donation.

### **SOLICITOR'S REPORT**

Solicitor Agnellini discussed an ordinance for stipends regarding staffing for ambulance calls and recommended that Mayor Russo abstain from voting on this at its second reading as he directly benefits from this ordinance. He also noted that it would be OK for Comm. Leeds to vote on this ordinance, even though in the past he has advised the commissioner to not vote/ abstain on any ordinance or resolution regarding the fire department as his son is a member, even though he, personally, would not benefit; however, in this instance, based on the rule of necessity, he felt it would be OK and necessary for the commissioner to vote.

### **MISCELLANEOUS**

Municipal Clerk Kyle thanked Suzy Lawler and the many volunteers who helped plant the community garden.

### **PUBLIC COMMENT**

Peter Isen of 1301 Beach Terrace commend the governing body for tabling Ordinance 2019-11. Mr. Isen noted that he agreed with governing body that it would not be right for a person to profit from using borough facilities such as the basketball court. He was also concerned with the borough being sued, as well as setting a precedent with allowing for-profit groups to use borough facilities. Mr. Isen also discussed pickle ball and requested turning one of the borough's tennis courts into a pickle ball court. There was discussion that this topic had come up in the past and that the governing body was going to look into doing this. Mr. Carter discussed that the tennis courts needed maintenance. The governing body also discussed a new fence at the tennis courts. Mr. Isen also noted that the playground needs to be maintained, adding that some of the equipment is rusty. Mr. Isen also noted that he spoke to the municipal clerk regarding ice cream vending on the beach and that he does not see the vendors down near the other end of the beach (near 13<sup>th</sup> Avenue). He suggested that next year the ordinance be re-written to be sure that the entire beach is covered. There was further discussion on the beach vending license.

### **ADJOURNMENT**

MOTION- LAWLER, SECOND- LEEDS. ALL IN FAVOR - All AYES- none opposed. (9:49 AM)