

August 14, 2013

A Regular Meeting of the Borough Council of the Borough of Avalon was held on Wednesday, August 14, 2013 at 7:40 p.m. in the Meeting Room, 3100 Dune Drive, Avalon, New Jersey.

Attendance: Public - - - - - 140 Reporters - - - - - 2

The meeting was called to order by Council President Ellenberg.

Roll call:

Council President Ellenberg	Present
Council Vice President Covington	Present
Councilman Dean	Present
Councilwoman Hudanich	Present
Councilman McCorristin	Present

Also present:

Andrew J. Bednarek Business Administrator
Stephen D. Barse, Esquire, Borough Solicitor
William Macomber, Director of Public Works/Utilities
Paul E. Short, Sr., Code Enforcement Officer
Scott Wahl, Public Information Officer
Thomas R. Thornton, P.E., Borough Engineer, Hatch Mott Macdonald, LLC
Scott D. Taylor, CLA, AICP, PP, Professional Planner and Landscape Architect
for the Borough of Avalon
William J. Kearns, Jr., Esquire
Dr. Brian Reynolds, Chairman, Avalon Environmental Commission

Council President Ellenberg read the Open Public Meetings Act Announcement.

Notice of this Regular Meeting was included in the Annual Schedule of Meetings dated June 12, 2013. It was given to the news media and posted on the Official Bulletin Board as required by law.

Public comments regarding Resolutions:

None.

Resolution No. 141-2013: A RESOLUTION FOR RENEWAL OF MEMBERSHIP IN THE ATLANTIC COUNTY MUNICIPAL JOINT INSURANCE FUND

Motion made by Council Vice President Covington, seconded by Councilman McCorristin that the resolution be adopted.

ROLL CALL VOTE:

Council Vice President Covington	Aye
Councilman Dean	Aye
Councilwoman Hudanich	Aye
Councilman McCorristin	Aye
Council President Ellenberg	Aye

Resolution No. 142-2013: A RESOLUTION APPOINTING PATROLMEN FOR THE BOROUGH OF AVALON

Motion made by Councilman Dean, seconded by Council Vice President Covington that the resolution be adopted.

August 14, 2013

ROLL CALL VOTE:

Council Vice President Covington	Aye
Councilman Dean	Aye
Councilwoman Hudanich	Aye
Councilman McCorristin	Aye
Council President Ellenberg	Aye

Resolution No. 143-2013: A RESOLUTION AUTHORIZING THE BOROUGH OF AVALON TO ACCEPT A 2013 DRIVE SOBER OR GET PULLED OVER STATEWIDE LABOR DAY CRACKDOWN GRANT FROM THE NEW JERSEY DIVISION OF HIGHWAY TRAFFIC SAFETY IN THE AMOUNT OF FOUR THOUSAND FOUR HUNDRED (\$4,400.00) DOLLARS

Resolution No. 144-2013: A RESOLUTION SUPPORTING THE DRIVE SOBER OR GET PULLED OVER 2013 STATEWIDE CRACKDOWN

Motion made by Councilman McCorristin, seconded by Councilman Dean that the resolutions be adopted.

ROLL CALL VOTE:

Council Vice President Covington	Aye
Councilman Dean	Aye
Councilwoman Hudanich	Aye
Councilman McCorristin	Aye
Council President Ellenberg	Aye

Resolution No. 145-2013: A RESOLUTION AUTHORIZING THE BUSINESS ADMINISTRATOR OF THE BOROUGH OF AVALON TO SUBMIT APPLICATIONS TO THE CAPE MAY COUNTY OPEN SPACE REVIEW BOARD FOR THE 39TH STREET COMMUNITY PARK IMPROVEMENTS AND PARK/RECREATION DEVELOPMENT FOR THE 44TH STREET AND 48TH STREET DUNE AND BEACH TRAIL PROJECT

Motion made by Councilwoman Hudanich, seconded by Council President Ellenberg that the resolution be adopted.

ROLL CALL VOTE:

Council Vice President Covington	Aye
Councilman Dean	Aye
Councilwoman Hudanich	Aye
Councilman McCorristin	Aye
Council President Ellenberg	Aye

Resolution No. 146-2013: A RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES CONTRACT WITH WILLIAM JOHN KEARNS, JR., ESQUIRE, KEARNS, REALE & KEARNS OF WILLINGBORO, NJ AS SPECIAL COUNSEL FOR LAND USE AND OTHER RELATED MATTERS FOR THE BOROUGH OF AVALON FOR A TERM OF FIVE (5) MONTHS COMMENCING AUGUST 1, 2013 THROUGH DECEMBER 31, 2013

Motion made by Council President Ellenberg, seconded by Councilman Dean that the resolution be adopted.

ROLL CALL VOTE:

Council Vice President Covington	Aye
Councilman Dean	Aye
Councilwoman Hudanich	Aye
Councilman McCorristin	Aye
Council President Ellenberg	Aye

August 14, 2013

Resolution No. 147-2013: A RESOLUTION RE: COMPLIANCE OF THE GOVERNING BODY WITH PROMULGATION OF THE LOCAL FINANCE BOARD OF THE STATE OF NEW JERSEY

Motion made by Councilwoman Hudanich, seconded by Council Vice President Covington that the resolution be adopted.

<u>ROLL CALL VOTE:</u>	Council Vice President Covington	Aye
	Councilman Dean	Aye
	Councilwoman Hudanich	Aye
	Councilman McCorristin	Aye
	Council President Ellenberg	Aye

Resolution No. 148-2013: A RESOLUTION AUTHORIZING PAYMENT OF BILLS

Motion made by Councilwoman Hudanich, seconded by Council Vice President Covington that the resolution be adopted.

<u>ROLL CALL VOTE:</u>	Council Vice President Covington	Aye
	Councilman Dean	Aye
	Councilwoman Hudanich	Aye
	Councilman McCorristin	Aye
	Council President Ellenberg	Aye

Ordinance:

Second Reading, public hearing and final action on Ordinance No. 683-2013:

Motion made by Councilman McCorristin, seconded by Councilman Dean that Ordinance No. 683-2013 be brought on for second reading, public hearing and final action.

<u>ROLL CALL VOTE:</u>	Council Vice President Covington	Aye
	Councilman Dean	Aye
	Councilwoman Hudanich	Aye
	Councilman McCorristin	Aye
	Council President Ellenberg	Aye

Borough Clerk to read aloud Ordinance No. 683-2013:

Ordinance No. 683-2013:

AN ORDINANCE AMENDING CHAPTER 27 (ZONING)
OF THE CODE OF REVISED GENERAL ORDINANCES, 2000
REGARDING RESORT HOUSES

Council President Ellenberg opened the meeting for public hearing on Ordinance 683-2013 and asked if there were any questions or comments.

Verbatim transcript attached.

Motion made by Councilman McCorristin, seconded by Councilman Dean that the public hearing be closed.

<u>ROLL CALL VOTE:</u>	Council Vice President Covington	Aye
	Councilman Dean	Aye
	Councilwoman Hudanich	Aye
	Councilman McCorristin	Aye
	Council President Ellenberg	Aye

August 14, 2013

Motion made by Council, seconded by Council that Ordinance No. 683-2013 be finally adopted, submitted to the Mayor for approval and advertised according to law.

<u>ROLL CALL VOTE:</u>	Council Vice President Covington	Naye
	Councilman Dean	Naye
	Councilwoman Hudanich	Naye
	Councilman McCorristin	Naye
	Council President Ellenberg	Naye

Reports of Officials:

None.

Public Comments:

Verbatim transcript attached.

Resolution:

Resolution No. 149-2013: A RESOLUTION TO CONDUCT A CLOSED SESSION PURSUANT TO N.J.S.A. 10:4-12.b OF THE OPEN PUBLIC MEETINGS ACT PERTAINING TO ATTORNEY CLIENT PRIVILEGE, CONTRACT NEGOTIATION AND PENDING LITIGATION REGARDING UPDATE ON SCHEDULING OF SETTLEMENT ESTATE OF RICH PROPERTY, 4112 FOURTH AVENUE TO THE BOROUGH OF AVALON AND UPDATE REGARDING WILLIAM W. LISOWSKI AND CLARA E. LISOWSKI, PLAINTIFFS, V. BOROUGH OF AVALON AND THE STATE OF NEW JERSEY, TIDELANDS RESOURCE COUNCIL, DEFENDANTS LITIGATION

Motion made by Councilman Dean, seconded by Council President Ellenberg that the resolution be adopted.

<u>ROLL CALL VOTE:</u>	Council Vice President Covington	Aye
	Councilman Dean	Aye
	Councilwoman Hudanich	Aye
	Councilman McCorristin	Aye
	Council President Ellenberg	Aye

Motion made by Councilman McCorristin, seconded by Councilwoman Hudanich to recess the public portion of the Regular Meeting and go into Closed Session.

<u>ROLL CALL VOTE:</u>	Council Vice President Covington	Aye
	Councilman Dean	Aye
	Councilwoman Hudanich	Aye
	Councilman McCorristin	Aye
	Council President Ellenberg	Aye

Public portion of Regular Meeting recessed at 8:50 p.m.

Motion made by Council Vice President Covington, seconded by Council President Ellenberg to adjourn the Closed Session and go back into the public portion of the Regular Meeting.

<u>ROLL CALL VOTE:</u>	Council Vice President Covington	Aye
	Councilman Dean	Aye
	Councilwoman Hudanich	Aye
	Councilman McCorristin	Aye
	Council President Ellenberg	Aye

August 14, 2013

Public portion of Regular Meeting reconvened at 9:06 p.m.

Motion made by Councilwoman Hudanich, seconded by Councilman McCorristin to adjourn the Regular Meeting.

<u>ROLL CALL VOTE:</u>	Council Vice President Covington	Aye
	Councilman Dean	Aye
	Councilwoman Hudanich	Aye
	Councilman McCorristin	Aye
	Council President Ellenberg	Aye

Regular Meeting adjourned at 9:06 p.m.

Respectfully submitted,

Amy W. Kleuskens, Borough Clerk

David B. Ellenberg, Council President

Council President Ellenberg read the following statement into the record:

“Good evening. The Avalon Borough Council is now prepared to conduct a public Hearing on our intent to create an ordinance that will regulate so-called “resort houses” in the Borough of Avalon. Before we accept public comment, we wish to provide some background on this topic, and explain with as much clarity as possible the context of comments that will help us draft the
August 14, 2013

best ordinance possible. Please allow Council to be very clear on some important points: Mayor and Council completely support the creation of a new ordinance that will prevent these so-called resort houses from being operated in residential neighborhoods. It is our expressed intent to prohibit these facilities as operating businesses with complete disregard to the integrity of our residential neighborhoods. It is our intent to draft an ordinance that defines with laser-like precision what a resort house is. Avalon’s Mayor, Council and Planning and Zoning Board have been working on this for more than a year and we fully support the overwhelming sentiment in our community that these “businesses” should not operate in residential neighborhoods.

About a year ago, residents of the Borough came to a Council meeting to express concerns about activities at a house located on 48th Street. The activities included weddings, large parties and other events that disturbed the ability of residents to enjoy their homes. Based on the information provided, the question became whether the property was being used more as a resort type property that is associated with properties located in a hotel district, rather than in a residential district. As a result, the Borough entered into mutual ten-page settlement agreement with the owner of this property to prohibit and restrict certain activities that the current ordinance did not exclude.

We have spent many hours working on an ordinance that addresses Chapter 22 of our rental licensing ordinance, and Chapter 27 of our zoning ordinance which is before us this evening. We have asked for, and received input, from the Avalon Planning and Zoning Board, members of the public, and realtors to consider constructive suggestions to address the situation. This evening we have retained the services of William Kearns, a special counsel with the New Jersey League of Municipalities, who will help our legal team draft the best ordinance possible. In November 12, 2012 Avalon amended ordinance 663-2012 that the definition of a hotel/motel occupancy is consistent with State statute. Any property with more than 24 overnight guests would be considered a hotel, subject to all zoning restrictions as well as State regulations related to hotels.

Our intent during this public comment portion of the meeting is to create a legislative record through the findings of fact so we can adopt a new ordinance that is not overbroad and cannot be challenged for being overbroad or vague. If you attended the AHLOA meeting last Saturday and wrote questions or ideas for the Borough to be considered, rest assured those questions have been forwarded to Mayor, Council and Borough attorneys and are included in this public comment and record.

We ask that you state your name and address for the record when you approach the microphone, speak clearly, spell your last name, and present your comments in a concise manner so everyone who wishes to comment may do so. Please keep your comments to under five minutes; we ask that once you have spoken please do not approach the podium a second time. Everyone will have one chance to speak; we want everyone to have a chance to speak.

I will now open the meeting for public comments.”

Due to a malfunction in the recording device, a verbatim transcript was not able to be obtained. The following individuals who commented:

John Cuthbert, President, Avalon Home and Land Owners Association indicated that there have been one hundred sixty-three emails from Avalon Home and Land Owners Association members supporting a resort house Ordinance. He commented that they support the intent of the Ordinance, expressed that he is disappointed with the language as proposed, that the Ordinance must be uncompromising. He added that parking and trash issues need to be diligently enforced.

Stuart Friedman, 285 48th Street read the following statement into the record:

“To: Avalon Borough Council, cc: Mayor Marty Pagliughi, Administrator Andrew Bednarek

At the last Council meeting the owner of 274 48 Street stated his opinion on the proposed **Resort House** ordinance indicating his belief that existing noise and garbage ordinances could easily take care of problems with rental homes. If only that were so we wouldn't have had a “standing room only” crowd at Saturday's ALHOA meeting nor would we all be here tonight, at a public hearing, to discuss the issue of
August 14, 2013

Resort Homes intruding into residential areas. I thought the Council and the community might appreciate an update on how things are **actually** going on 48 Street during this rental season from the point of view of someone who lives there.

In his agreement with the Borough, the owner of 274 48th Street received his rental license for 2013 **only** if he agreed to the following:

1. to discontinue advertising and renting his property as an event venue suitable for weddings or other social gatherings, corporate or religious retreats, seminars or other business events
2. to limit overnight occupancy to 24 people including children
3. to limit day guests to 12
4. that parking shall be restricted to 9 vehicles, 5 parked in the driveway and 4 parked in front of the house
5. that amplified music is prohibited
6. that the owner shall have trash monitored daily when the house is occupied
7. that trash shall not be placed in front of any neighbor's home
8. to post all of these provisions as well as any noise or other ordinances relevant to renters on the premises and to include all restrictions in the lease agreement

So, how has this actually worked out this season?

Events - While we have not seen any weddings this season, we have had a religious retreat and many family reunions at 274 48 street.

Number of guests - On several occasions we have had groups of more than 30 sleeping in the house. In conversations with renters, it is clear that this house is, at times, being used as a multifamily dwelling.

Vehicles - Most weeks there have been 10, 11 or 12 cars, not 9, and only in one or two instances during this entire season have the renter parked five cars in the driveway. All other weeks have seen only 2 to 4 cars in the driveway and all the rest in the street. During one week the renters, in addition to their cars, rented 2 electric vehicles, which they used illegally to go back and forth to the beach on the dune path.

Garbage - During some weeks the garbage has been monitored but there have been instances of egregious abuse. I have a few pictures from this summer to demonstrate this.

As relates to noise - Late night is still of concern to neighbors. Renters sit out on the back decks and talk late into the night. Sometimes they respond to a request for quiet and sometimes not. The police have been called a few times.

All in all, residents on 48 and 49 Streets agree that this house, despite some effort at change, is still an intrusion in an otherwise quiet neighborhood and still presents many issues to homeowners who, while not opposed to rental properties, are opposed to high impact rental properties on single family zoned streets. We urge the Council to continue down the path towards a speedy resolution of this issue and thank you again for your concern and support.

Sincerely,
Stuart Friedman”

Pate Rawak, 3845 Ocean Drive expressed concern with a change in Avalon culture, suggested enforcing existing Ordinance for trash issues. He commented that neighbors are becoming police officers for neighbors.

Bernie Dlutowski, 10 W. 29th Street asked why the present Ordinances are not being enforced. They should be eliminated.

Kate Edy Moore, 4738 Ocean Drive commented that a house at the end of Fifth Avenue has been

operating the same as the house on 48th Street for the past ten years.

Martha Wright, 632 7th Street asked if retail advertising attracts clients looking for resort house accommodations. She suggests defining the problem and treating it and consider social medial as advertising when drafting the Ordinance.

John Nick, 3801 Ocean Drive

Pat Sweitzer, 65 W. 13th Street

Mari O'Brien, 127 34th Street

Dr. Bruce Chodosh, 276 64th Street

M. O'Donoghoe, 285 56th Street

Gail Moore, 7888 Sunset Drive

Bob Maggetti, 128 16th Street

Joseph Spina, 272 75th Street

Ronald Sandmeyer, 158 58th Street