

July 25, 2018

A Work Session of the Borough Council of the Borough of Avalon was held on Wednesday, July 25, 2018 at 4:02 p.m. in the Meeting Room, 3100 Dune Drive, Avalon, New Jersey.

Attendance: Public ----- 105

Reporters ----- 1

The Meeting was called to order by Council President Deever.

Pledge of allegiance.

<u>Roll call:</u>	Council President Deever	Present
	Council Vice President Covington	Present
	Councilman Dean	Absent
	Councilwoman Hudanich	Present
	Councilman McCorristin	Present

Also present:

Scott Wahl, Business Administrator
James Waldron, Assistant Business Administrator
Stephen D. Barse, Esquire, Borough Solicitor
Paul Short, Code Enforcement Official
James V. Craft, Chief Financial Officer
William Macomber, Director of Public Works/Utilities
Jeffrey R. Christopher, Chief of Police
Thomas R. Thornton, P.E., Borough Engineer, Mott Macdonald
Alexis Coan, Tax Collector
Erin Brown, Library Director
Elizabeth McManus, Senior Associate, Clarke Caton Hintz
Paul Baldini, Solicitor, Planning/Zoning Board

Council President Deever read the Open Public Meetings Act Announcement.

Notice of this Work Session was included in the Annual Schedule of Meetings dated June 27, 2018. It was given to the news media and posted on the Official Bulletin Board as required by law.

Council President Deever asked Scott Wahl to make a brief statement regarding the status of the Borough's review of Ordinances that regulate construction.

Scott Wahl read the following statement:

Thank you Council President. Since the last Council meeting on July 11th, the administration presented an opportunity to you and the Mayor to increase enforcement as we move through potential ordinance changes. We enacted the change on Friday, July 13th. We now have full time Code Enforcement from one hour before allowable construction hours to one hour after allowable hours, Monday through Saturday. This has helped with having a physical presence at sites that have been subject to repeated complaints. We have also updated links on the municipal website that address some of the frequently asked questions regarding construction in Avalon, as well as our new hours of active Code Enforcement.

At your request, we held another interdepartmental meeting that involved both Council President Deever and Council Vice President Covington who met with the same committee who met prior on July 3rd, on July 18th. I would classify the meeting as extremely productive as we worked on issues previously raised by the public and a fact-based approach to enforceable ordinances that are fair to both property owners, and contractors. Conversations and new ideas are discussed on a daily basis involving our team. The issues being discussed include but are not limited to days/holidays/hours of allowable construction; management and remediation of sites subject to repeated verified violations; prosecutorial procedures; and issues involving job sites including swimming pools.

We have previously stated at two Council meetings, and during our meeting with 7th Street property owners, that it is statutorily impossible to enact new ordinances before the end of the summer. We continue to work towards a reasonable, balanced approach that is fair to the construction community, and fair to the property owners who are adjacent to these temporary active job sites. As with every issue before the Borough and this Council, our best efforts will be to get this right, and communication will continue through the PIO office and through the municipal website.

Council President Deever thanked Scott Wahl for the update and concurred with the report. He stated Council remains committed to examine all issues and strike a fair balance between competing interests, and noted Council has heard the site-specific neighborhood concerns at two prior Council Meetings. He encouraged anyone who would like to bring up a new concern or issue that impacts the Borough, to do so during the public comment portion of this meeting.

Discussion regarding Resolution approving Amendment to the Shared Services Agreement between the Avalon Free Public Library, Avalon Board of Education and Borough of Avalon regarding contributions toward the HVAC Project.

Jim Craft reported this Shared Services Agreement was first adopted in 2005. This amendment is specifically for the loan that the Borough is making for the Library to cover their cost of the HVAC improvements at the central plant, and it specifies when and how the funds will be repaid.

Councilman McCorristin announced the Library and Municipal Building had their chiller shut down earlier this week for a few hours. The temporary system is running and operating until the new chiller will be installed, which is expected to take place no later than August 5, 2018.

Council Vice President Covington inquired how the agreement may be executed by counterparts.

Jim Waldron indicated all parties are not required to sign a single agreement. Signature pages can be attached, and the signature pages constitute the full agreement.

Council agreed to proceed with a Resolution to be prepared for the August 8, 2018 Regular Meeting.

Discussion regarding Resolution authorizing the extension of the grace period for 3rd Quarter Property Taxes.

Scott Wahl read the following report:

Council is in receipt of a request by our Tax Collector Ally Coan regarding an extension of the grace period for the tax bills that are due on August 1st.

Council is aware that the State of New Jersey again ran up within hours of a deadline to adopt a new state budget, which has resulted in the late establishment of the tax rates issued by the County. The Borough has received confirmation that the overall tax rate in the Borough of Avalon will be .488 cents per one hundred dollars of assessed valuation. The overall rate includes the municipal, county, open space, library, and school rates. As a result of this Council reducing the municipal tax rate by nearly three cents, the Borough has the lowest overall tax rate in Cape May County.

Ms. Coan has in writing that the Avalon tax rate is final; typically a signed certification, while not required, is in the Borough's possession by now. Ms. Coan learned this morning that the signed certification will be in hand by the Borough tomorrow morning. Ms. Coan indicates that the tax bills will be in the mail on Monday, July 30th.

State statute provides that if the Borough shall extend the grace period, it must do so for 25 days. This would extend the grace period to August 24th, 2018. Any property owner who pays the quarterly property taxes before or on that date may do so without penalty; any property owner who pays after that date will be subject to interest retroactive to August 1st, per state statute.

Ms. Coan is asking Council for permission to extend the grace period due to the State's inability to come to a budget resolution in a timely manner by 25 days; if Council agrees, a resolution appears on the agenda to grant this request. If Council approves this, I will take the necessary steps as Public Information Officer to use our appropriate media channels to notify the public of the extension of the grace period.

Ms. Coan is here to answer any questions you may have.

Council agreed to proceed with a Resolution to be considered at today's Regular Meeting.

Discussion regarding Resolutions approving the Application for an Off Premise 50/50 Raffle License submitted by A Friend in Need Ltd., Inc. to be held October 6, 2018 and an On-Premise Merchandise Raffle License submitted by the Avalon Garden Club to be held on August 19, 2018.

Council agreed to proceed with Resolutions to be considered at today's Regular Meeting.

Further Discussion regarding Ordinance concerning Avalon Clean Water Initiative and single use plastics.

Scott Wahl reported both Avalon and Stone Harbor have been working with various professionals, including Dr. Lenore Tedesco from The Wetlands Institute, on an Ordinance that would eliminate the use of some single use plastics. The Avalon Ordinance would suggest the elimination of single use plastic bags, straws, and Styrofoam food container products. During the month of June, a meeting with merchants was held to discuss this initiative, which was attended by approximately 20 individuals. There are concerns an early implementation date may not provide adequate time for Avalon merchants to exhaust their supplies of the materials to be banned. Stone Harbor and Avalon have agreed upon an effective date of June 1, 2019 for this Ordinance to provide adequate notice and allow merchants make the necessary preparations for the new products. The Avalon Chamber of Commerce and 7 Mile BCA have offered to work with merchants to pursue and explore any co-op opportunities which would reduce the expense to Avalon merchants. At the July 11, 2018 Work Session, Councilwoman Hudanich suggested the "hardship" portion of the proposed Ordinance be revisited. He asked Jim Waldron to review the current draft in regards to this section.

Jim Waldron read the definition of the term "hardship" as written in the proposed Ordinance as follows: "any occurrence or event which is extraordinary in its nature and scope which was not foreseeable through the use of ordinary prudence and diligence and which is unique to a particular exemption- applicant, and the reason or reasons justifying an exemption must be beyond the exemption-applicant's control. An exemption shall only be granted by the Review Committee in the exercise of its discretion for good cause and then only when there is no other reasonable or practical alternative and where the denial of an exemption would result in serious and undue hardship, financial or otherwise to the exemption-applicant.

An exemption, if granted, shall be for the least amount of time reasonably necessary to alleviate the occurrence or event up to a maximum period of one year and, further provided however, that there may be only one exemption granted to any applicant under the circumstances set forth herein.

An exemption shall not be granted for negligence or oversight on the part of the exemption-applicant." He explained the reason the one year hardship term has been maintained is consistent with the proposed Stone Harbor Ordinance. As Council is aware, some Avalon businesses are seasonal, while some are year-round. This proposed Ordinance language recognizes that a business cycle for Wawa would be much different than a seasonal business of the same or similar type. It is thought that by vesting the committee with the ability to decide a reasonable exemption term within a given set of circumstances up to a maximum of one year would be the favored or preferred way to go. However, the ultimate decision would remain with Council. Any interested party that is dissatisfied with the decision of the review committee would have the ability to appeal that decision with Borough Council.

Councilwoman Hudanich asked if the one year exemption would be granted from the date of the application.

Jim Waldron responded yes.

Councilman McCorristin clarified that the review committee could grant a varying time frame for hardship relief.

Council Vice President Covington inquired if other shore communities are attempting to adopt similar Ordinances, and asked how Avalon's Ordinance compares to the Ordinances being considered by those communities.

Jim Waldron noted there are many shore communities in Monmouth in Ocean Counties that are somewhat ahead of Avalon, while there are shore communities in Cape May County that are in a similar position to Avalon by exploring what regulations could be placed.

Council Vice President Covington stressed the importance of enacting similar Ordinances and inquired about offshore communities within Cape May County.

Scott Wahl reported the offshore communities either have been or will shortly be approached about possibly exploring how they can adopt similar initiatives.

Councilwoman Hudanich noted it is part of the social responsibility of corporations to promote environmental sustainability.

Jim Waldron stated if the Governor approves legislation imposing a tax on these items, it will be very difficult for mainland communities to agree to this type of program, however that legislation has not yet been signed.

Council agreed to proceed with an Ordinance to be prepared for first reading at the August 8, 2018 Regular Meeting.

Public Comments:

Council President Deever announced that any member of the public present that wishes to speak on the Ordinances addressing Affordable Housing will have an opportunity to address their concerns and questions to Council during a public hearing specifically addressing these agenda items at the Regular Meeting this afternoon.

Tammy Cardone, Avalon Hodge Podge, asked that the definition for a single-use container as included in the proposed plastic bag Ordinance be explained.

Jim Waldron read the following definition from the proposed Ordinance: ““Single-Use Plastic Carryout Bag” means a bag provided by a business establishment to a customer typically at the point of sale for the purpose of transporting purchases, which is made predominantly of plastic derived from either petroleum or a biologically-based source.” He explained there is a section of the proposed Ordinance which includes a list of exemptions.

Tammy Cardone inquired if a copy of the draft Ordinance could be made available to the public prior to the introduction of the Ordinance.

Jim Waldron read the following excerpt from the proposed Ordinance:

**“17-6.7 EXEMPTIONS FOR RECYCLABLE OR PROPERLY COMPOSTED
FOOD SERVICE WARE AND OTHER POLYSTYRENE/PLASTIC FOAM PRODUCTS**

- a) Products made from polystyrene/plastic foam which is wholly encapsulated or encased by a more durable material are exempt from the provisions of this chapter. Examples include surfboards, boats, life preservers, and craft supplies which are wholly encapsulated or encased by a more durable material, and durable coolers not principally composed of polystyrene/plastic foam.

- b) Construction products made from polystyrene/plastic foam are exempted from this ordinance if the products are used in compliance with Borough Code and used in a manner preventing the polystyrene/plastic foam from being released into the environment
- c) Emergency, Hospital, and Medical Supply and Services Procurement: In an emergency situation and for the immediate preservation of the public health or safety, Borough facilities, food vendors, Borough franchises, contractors and vendors doing business with the Borough shall be exempt from the provisions of this Chapter.
- d) Laundry dry cleaning bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste; although the Borough encourages the use of recyclable or compostable products throughout.
- e) Bags provided by physicians, dentists, pharmacists or veterinarians to contain prescription drugs or other medical necessities;
- f) Bags used by a customer inside a business establishment and even when intended for carry-out and off premises use to:
 - i. Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;
 - ii. Contain or wrap frozen foods, meat, or fish, whether or not prepackaged;
 - iii. Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases; or
 - iv. Contain unwrapped prepared foods or bakery goods;
 - v. Contain bait and items of a similar nature used for recreational fishing and crabbing.
- g) Bags of any type that the customer brings to the store for their own use for carrying away from the store goods that are not placed in a bag provided by the store.
- h) Meat trays are exempt from the provisions of this Chapter.
- i) Any product purchased, prepared or packaged outside the Borough of Avalon and sold in or delivered into the town are exempt from the provisions of this chapter.”

After brief discussion, Council agreed that excerpts of the Ordinance could be released, such as the list of exemptions, rather than the whole draft Ordinance, as that is subject to change and is not an official public document. It was also suggested to promote public involvement, input, and education.

Katie Volz, 631 7th Street, indicated this is the fourth Council Meeting she has attended this year with an interest in changing current construction practices in Avalon during the summer months. She clarified that she is not opposed to all construction, however stated she is opposed to construction under the current terms to which it is allowed and supervised. She then noted she has received several disconcerting responses to her concerns during meetings and in e-mails.

Council Vice President Covington asked Ms. Volz if she is implying that members of Council made disconcerting remarks.

Katie Volz responded yes, and indicated she has received those responses during Council meetings or in e-mails from members of Council.

Councilwoman Hudanich expressed taking umbrage to Ms. Volz statement, and noted Council started the meeting with a statement providing a delineated explanation of what the Council and other Borough Officials are moving forward with regarding the public's concerns. For example, an additional Code Enforcer was appointed shortly after the last Council Meeting. She noted the Borough has become a divisive town, and expressed sadness that a builder felt the need to defend himself for his living. She noted all Council members never intend to squelch the public from coming before Council and stating their facts, and as elected officials, Council want to listen. She indicated Council has heard the public's comments and concerns clearly. She expressed that when statements are taken out of context it is offensive, unnecessary, and counter-productive. She noted Council and Borough Officials are dealing with the real safety issues, and all Borough representatives care about the health, safety, and welfare of all residents and visitors. Council is listening to the concerns and is doing what can be done within the variables controlled by the Borough. The Borough is taking action to answer the concerns. Concerns do not go unheard.

Katie Volz apologized if she has offended any member of Council.

Council Vice President Covington expressed offense to the suggestion that Council would make such inflammatory statements.

Katie Volz offered to provide copies of comments that were made.

Councilwoman Hudanich stated Ms. Volz does not need to provide any evidence to her claims, which would cause Council to continue defending their positions.

Katie Volz apologized again for any offense and noted she is trying to have her opinion stated as well. She noted she takes responsibility for what she has not done in the past, such as not taking action when regulations were changing, and not being involved enough with the north end flooding. She stressed again that she is not against all construction, however asked Council to consider making changes, such as reduced construction hours, no construction activity on Saturday, Sunday, or any Holiday from Memorial Day to Labor Day, and increased supervision and enforcement of code violations. She asked Council to take responsibility for making changes that will strike a balance between responsible construction and how it is delivered, and does not compromise the safety or enjoyment of these precious few summer months.

Councilman McCorristin explained that Council rotates Presidents every year and clarified he was not removed from the position of Council President outside of those parameters. He referenced comments made in the press that he would not make a fair decision to do with construction, and noted the absurdity of such comments. He noted his position on the committee to re-write the Ordinance for dewatering pools and the parking of construction trailers. He noted the Borough is continuously looking to improve everything in Avalon, whether it be for the beach, the blocks, or the bay. He noted his decisions are only based on fairness, accuracy, and most importantly what he feels is right for Avalon. He noted at a prior Council Meeting, he had stated that Cape May County has four major sources of income, those being the fishing industry, Coast Guard, tourism, and construction. At that same meeting, he mentioned Cape May County has one of the largest drug problems in the state. He noted those comments were then rudely interrupted by someone in the audience jumping up and making statements out of order. The final comments he made that evening stated that unemployment and poverty are major factors contributing to people turning to drugs. He clarified that his comments did not state that contractors not working would make them drug addicts, as was the quoted in the press. He expressed unrest that the writer of such articles misquoting his statements de-characterized his profession. He noted that during the course of a new build, between 130 and 170 employees work on that job site, which is a lot of employment for our area. He expressed his intentions to strive daily to do his best for the Borough, and urged those who think otherwise to do further investigation before making incorrect and disparaging remarks.

Martha Wright, 632 7th Street, advocated that livestreaming and recording Council Meetings would help eliminate confusion about what is said at meetings. She speculated the high attendance for tonight's meeting could be attributed to the COAH Ordinances on the Regular Meeting agenda, and noted that if the meetings were livestreamed or recorded, those in attendance today could have watched the excellent presentations made by the attorneys retained to represent the Council and Planning/Zoning Board made at prior meetings at their convenience. She advocated that livestreaming meetings will promote transparency in government. She noted Azek decking, which is a petroleum based plastic building product similar to Trex, is abundantly used in this community. On November 8, 2017, there was an Azek incident at the building site constructing her neighbor's home, which was reported to the NJ Department of Environmental Protection and Cape May County Board of Health on November 14, 2017. At Council Meeting held in December, an amendment to the silt fence Ordinance was discussed. She stated she spoke at that meeting to advocate the importance of keeping Azek out of the bay. On May 9, 2018 she reported another Azek incident, which was that the same contractors cutting Azek and allowing the residue to blow into the bay had moved their station to cut the Azek in front of the storm sewer. On May 10, 2018, she filed a complaint on CitizenServe with the Borough about the Azek in the bay. On May 15, 2018, the Borough responded to the complaint, stating the Borough has no Ordinances regarding airborne or natural waterway pollutants. She stressed the importance of Council addressing this issue. She noted there are only two Council Meetings left during the summer season and urged Council to address the public's concerns before summers end.

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Julie Donatelli, 2989 First Avenue, referenced the out of control construction, which was covered in a Philadelphia Inquirer front page article, and noted she has had many conversations with contractors regarding collection bags on saws, and has found that there are some communities that require such bags. She asked that Council seriously consider such a regulation as soon as possible and urged Council to take action regarding the construction regulations before Labor Day.

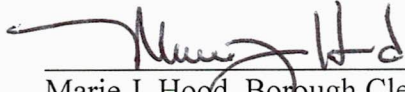
Elaine Scattergood, 75 30th Street, spoke in support of Martha Wright's concerns and also urged Council to consider mandating the use of collection bags on saws when cutting Azek. She noted the construction hours during the off-season are seven days a week and suggested Council consider restricting the construction to six days per week, as well as consider the public's right to the quiet enjoyment of their homes. She also expressed concerns regarding the herbicides and pesticides utilized in the Borough, and noted these harmful chemicals often wash into the waterways, harming wildlife. She further noted the health concerns posed by such chemicals.

Motion made by Councilwoman Hudanich, seconded by Council Vice President Covington to adjourn the Work Session.

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

Work Session adjourned at 4:55 p.m.

Respectfully submitted,



Marie J. Hood, Borough Clerk



James Deever, Council President