

August 26, 2020

A Work Session of the Borough Council of the Borough of Avalon was held on Wednesday, August 26, 2020 at 4:00 p.m. in the Meeting Room, 3100 Dune Drive, Avalon, New Jersey.

Attendance: Public ----- 2

Reporters ----- 1

The Meeting was called to order by Council President McCorristin.

Pledge of allegiance.

<u>Roll call:</u>	Council President McCorristin	Present
	Councilman Deever	Present
	Councilwoman Hudanich	Present
	Councilwoman Juzaitis	Present
	Councilman Wierman	Present

Also present:

Scott Wahl, Business Administrator

James Waldron, Assistant Business Administrator

Nicole Curio, Esquire, Borough Solicitor

William Macomber, Director of Public Works/Utilities

John Roscoe, Captain of Police

Thomas R. Thornton, P.E., Borough Engineer, Mott Macdonald

Council President McCorristin read the Open Public Meetings Act Announcement.

Notice of this Regular Meeting was included the annual Schedule of Meetings dated June 24, 2020. It was given to the news media and posted on the Official Bulletin Board as required by law.

Discussion regarding Resolution authorizing payment to provide additional professional engineering services in connection with Contract M-116, 8th Street Jetty Repairs.

Thomas Thornton reported the contractor has been demobilizing equipment and restoring the site. The final stage of this project is to remove the asphalt ramp and reconstruct the timber ramp and steps located at 8th Street and Avalon Avenue. The contractor has confirmed the wood will be delivered on Monday, August 31, 2020. The carpenter crew will begin to replace the ramp on Tuesday, September 1, 2020 and this project should be completed by Thursday, September 3, 2020. A budgetary amendment is being requested due to an increase in the services required to provide the construction phase and engineering for this project. As described in a report provided to Council by Mott Macdonald, the factors contributing to the amendment are as follows:

- Additional jetty slope repairs necessary on the landward slope.
- Various sizes and grades of stone. The accounting and book keeping regarding this project have been very intense, as an individual needs to know exactly how much stone is being placed, where the stone is being placed, and how much the stone weighs.
- Multiple equipment breakdowns and weather delays have prolonged the duration of the project.
- Mott Macdonald submitted detailed documentation to FEMA which included contractor's payroll, amount of overhead and profit, benefits to claims.

Mott Macdonald is requesting some of the additional funding to be applied toward their presence on the job site. The remainder would be used for the details provided FEMA regarding the various scopes of work, to allow the Borough of Avalon to be reimbursed. This cost would also cover processing the final payment application.

Council President McCorristin asked if there will be any follow-up on the condition of the jetty now that it has been serviced and replaced to ensure its safety in the future.

Thomas Thornton explained Mott Macdonald was able to verify the contractor's work and that the work followed the engineering plan. An underwater inspection is not considered necessary at this point. It would be recommended to allow Dr. Farrell with Stockton University to continue spot checks at various points along the jetty to monitor any settlements that may occur.

Councilwoman Hudanich asked if there is any recourse for the Borough concerning the breakdown of the equipment, as it appears the cost increased due to equipment failure.

Thomas Thornton stated he is unaware of any recourse the Borough may have regarding equipment issues.

Councilwoman Hudanich inquired if there have been conversations regarding any consideration during the period of this extension, considering these equipment failures have added to the parameters of the engineering bill, causing the Borough to pay the cost of things outside of the Borough's control.

Scott Wahl replied this issue had been discussed earlier, and noted Administration's support in holding a conversation about Councilwoman Hudanich's concerns.

Councilwoman Hudanich noted while a Certification of Funds is in place, she is of the opinion that a conversation should be had regarding the extension of the project, which is no fault of the Borough.

Thomas Thornton noted he would be happy to participate in the conversation.

Council agreed to proceed with a Resolution to be prepared for the September 9, 2020 Regular Meeting.

Discussion regarding an Ordinance establishing a procedure for property owners to obtain a release and discharge of certain deed restrictions imposed by the Borough of Avalon in certain deeds of conveyances executed and delivered by the Borough of Avalon prior to 1979.

James Waldron explained over the past few years, the Borough has been inundated with requests to release a certain type of deed restriction, which had its origin in the 1950-1970s. This restriction limits the height of principle structures built in the Borough, namely a "two-story height restriction." Subsequently, that restriction was challenged in certain litigation and was determined by the court as unenforceable by reason of vagueness. There is no definition as to what a story is, therefore there was no quantitative method of measurement. The Ordinance for consideration by Council is a mechanism to deal with the release of three types of deed restrictions. The first is the two-story height restriction. The second type is a construction requirement. The third type is any other undefined amount. As far as the two-story height restriction, the Borough has taken the position that this must be released as a matter of law based on the Willcox vs. Sorgenti case. Council has relied on this case for many years regarding the release of these restrictions. The second type is the so-called construction, that requires a building of a certain square footage be erected within a certain period of time or water and sewer be installed. These types of restrictions would be released on an application and we would be able to access the records, determine what type of building is there, the square footage, water and sewer account established, and it becomes a ministerial act to bring it before Council with that certification. Council would adopt a Resolution, and the normal course of business releases the deed restriction. The third category is some other type of undefined restriction. Should such an animal arise, this will trigger a hearing, as has happened in the past. There is a provision in this Ordinance that requires authorization for the Mayor and the Borough Clerk to execute a quit claim deed. Nicole Curio mentioned most title companies will want to receive this type of assurance, and there is a provision in this Ordinance to do that. None of these things will be released without Council adopting a formal Resolution. If Council chooses to adopt this Ordinance, there will be a global hearing, which will be tentatively held on September 23, 2020. All properties subject to these restrictions are being identified with language thought to sufficiently describe the property to comply with the statute. There is an expectation that these matters will be handled on a more expedited basis and more administratively than to go through the procedural aspects that Council now goes through. Now, Council conducts a hearing as if there is some discretion, but in fact the Willcox case says there is none.

Councilwoman Hudanich mentioned the outcome is already predetermined. She thanked all of the key players for their diligence in drafting this Ordinance. She confirmed Council is scheduled to consider this Ordinance on first reading today, and further action would be scheduled for the September 23, 2020 Regular Meeting.

James Waldron stated in addition to going in the newspaper, this Ordinance will be sent to attorneys, title companies, and all that have raised these issues and who practice in the geographical area.

Council President McCorristin clarified that the action scheduled for September 23, 2020 would be a global authorization. Provided this is approved by Council, there will no longer be a special hearing for like items.

James Waldron explained Council will receive a report from the Clerk's Office stating what is being requested along with a verification that any conditions have been met. If Council is satisfied, a Resolution will be adopted at the same meeting or the following meeting, at Council's discretion. The Clerk's Office has recently found that in at least one case, the subsequent grantee has imposed the same kind of condition in selling to an additional party and clarified that Council can only release restrictions imposed by the Borough of Avalon. For clarification purposes, the Ordinance refers to 1979, considering that is when the Borough adopted its first comprehensive Zoning Ordinance that was enacted pursuant to the Municipal Land Use Law, which became effective in 1976.

After a brief discussion, Council agreed to proceed with an Ordinance to be considered on first reading at today's Regular Meeting.

Discussion regarding bids received for Contract M-119, Borough Hall Roof Replacement.

Scott Wahl explained Council is in receipt of a bid tabulation sheet, a report from Mott MacDonald, a Certification of Funds from CFO James Craft, and a legal opinion from Alan Gould regarding bids received for Borough Hall Roof Replacement. The Borough received two bids. The low bidder was D.A. Nolt, Inc. of Berlin, New Jersey in the amount of \$467,622.00, which is 17% below the Engineer's Estimate.

Thomas Thornton explained 12 entities picked up bids, however only two submitted. The low bid was significantly lower than the Engineer's Estimate. Mott Macdonald has had some experience with D.A. Nolt, and while they had some challenges in completing the work, their work was satisfactory. This project has 105-day completion period. If this project is awarded at the September 9th Council Meeting, the work would be completed prior to the end of the year.

Council President McCorristin asked about the timeframe for this project.

Thomas Thornton said their schedule requires mobilization within 45 days because there will be a review period. The specifications allow a few months for the completion of the work.

Council President McCorristin noted the Borough has many issues with the Borough Hall roof and the storm season is approaching. He inquired if Council would have the option to delay the work due to the approaching storm season.

Thomas Thornton stated he is unaware of any such provision in the specifications; however, there may be language in the technical specifications that have been prepared by the architect to protect the interior of the building. If Council has concerns, this is something that can be discussed with the contractors.

Councilwoman Hudanich questioned what the visual mobilization looks like in regards to the parking lot and if the contractor will be fencing off certain sections of the lot.

Thomas Thornton explained the contractor will need an area near the building for staging. The specific details of the location is subject to the submittal of their plan for review and approval.

Council President McCorristin and Councilwoman Hudanich both agreed it would be in Council's best interest to review these items.

Councilwoman Hudanich asked if it is possible to have the work completed by Thanksgiving.

After a brief discussion, Council agreed to proceed with a Resolution to be prepared for the September 9, 2020 Regular Meeting.

Discussion regarding a Resolution authorizing the employment of Daniel Featherer as a full-time Police Officer for the Borough of Avalon Police Department.

Scott Wahl stated Council is in receipt of a memo from Chief Christopher regarding the hire of Daniel Featherer to the Avalon Police Department.

Captain Roscoe added he and Chief Christopher take great pride in having to hire new police officers. Daniel Featherer was the clear-cut number one from the prospects out of the 13 who passed the P/T test and interviewed with Avalon Police Department.

Councilman Wierman added Daniel Featherer finished first in the physical portion of the test and came with high recommendations.

Council agreed to proceed with a Resolution to be prepared for today's Regular Meeting.

Discussion regarding Resolution approving the amount of bonus for members of the Avalon Beach Patrol for the 2020 season.

James Waldron stated unfortunately, this matter comes before Council late in the season. This was delayed in part due to the COVID-19 crisis, as it was not clear if the beaches would open and to what degree. As it turns out, Avalon beaches were opened in May, however beach tags were deferred until July 3, 2020. As a result, beach tag workers started late in the season, and guards were employed for protected beaches. It has been recommended to reduce the eligibility for a bonus from 50 days to 40 days due entirely to this pandemic. The other issue is with the Beach Tag Inspectors, the recommendation is to reduce to a 30-day eligibility period. Assuming the guards and inspectors meet the eligibility requirements, they would be paid an incentive bonus to remain on the job from August 15th through Labor Day. As far as the Guards are concerned, again because of the uncertainty of schools and a number of other issues, beaches may stay open with limited protected beaches. The guards staying for the extended season would be entitled to the bonus beyond Labor Day, provided they meet the eligibility requirements. As far as the taggers are concerned, their service ends on Labor Day, as beach tags will not be required beyond then.

Council President McCorristin clarified that the bonus would be for 2020 only.

James Waldron confirmed.

Council President McCorristin asked for this to be discussed again in early 2021.

James Waldron agreed and further explained bonuses are awarded via Resolution and salaries are fixed by way of Salary Ordinance and appropriation. Under normal circumstances, Council would approve this prior to the beach season.

Council President McCorristin asked if this is competitive with other local municipalities.

James Waldron noted the bonuses and salaries were designed by James Craft to be competitive with our neighbors to the north and south.

Councilwoman Hudanich added it is important for tax payers to understand the spirit of the bonus is to make up for missed wages because they stopped working, or there is a need to keep them here until Labor Day.

Councilman Wierman noted this bonus offers an incentive for students to continue working on their off days and weekends.

James Waldron mentioned in 2019 there was an issue protecting the beaches through Labor Day.

Councilwoman Hudanich added Council raised base salaries to get competitive in the market.

Council agreed to proceed with a Resolution to be prepared for the September 9, 2020 Regular Meeting.

Public Comments

Council President McCorristin announced the Avalon Library Board of Trustees will be reimbursing the Borough in the amount of \$387,847.00 for the outstanding financial management and negotiations with the Avalon School. This will be added to the Borough budget in September or October 2020.

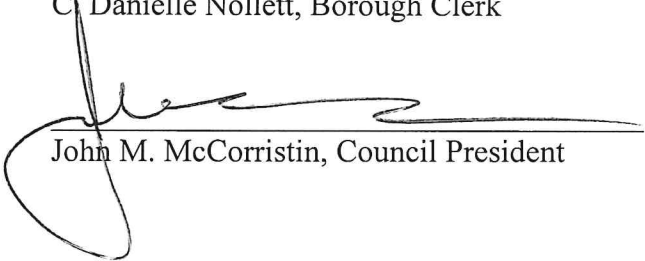
Motion made by Councilwoman Juzaitis, seconded by Councilman Wierman to adjourn the Work Session.

<u>ROLL CALL VOTE:</u>	Council Deever	Aye
	Councilwoman Hudanich	Aye
	Councilwoman Juzaitis	Aye
	Councilman Wierman	Aye
	Council President McCorristin	Aye

Work Session adjourned at 4:36 p.m.

Respectfully submitted,


C. Danielle Nollett, Borough Clerk


John M. McCorristin, Council President