

January 13, 2021

A Work Session of the Borough Council of the Borough of Avalon was held on Wednesday, January 13, 2021 at 4:00 p.m. in the Meeting Room, 3100 Dune Drive, Avalon, New Jersey.

Attendance: Public ----- 17

Reporters ----- 1

The meeting was called to order by Council President McCorristin.

<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
Jeffrey R. Christopher, Chief of Police
William McCormick, Director of Public Works/Utilities
Thomas R. Thornton, P.E., Borough Engineer, Mott Macdonald
Paul Short, Code Enforcement Officer
Donna Rothman, Chairperson of the Environmental Commission

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 appointing Joseph Stoltenberg as a Patrolman for the Borough of Avalon Police Department.

Chief Christopher explained due to a vacancy, the Avalon Police Department will be hiring one additional full-time Police Officer, namely Joseph Stoltenberg, a current Class II Special Law Enforcement Officer (SLEO II) with the Borough of Avalon. If approved by Council, Officer Stoltenberg will be attending the 50th Class of the Cape May County Police Academy starting January 19, 2021. The Police Training Commission requires the adoption of a Resolution appointing any Officer requested to attend the Police Academy.

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

Discussion regarding Resolution approving the certified list of 2020 Length of Service Program Credits.

Scott Wahl noted Council has received a memo regarding the LOSAP candidates and credits to accompany this annual Resolution. The list of eligible candidates is generated by the Fire Department for this credit. The statute requires that the list be certified by the governing body on an annual basis.

Council agreed to proceed with a Resolution to be prepared for the January 27, 2021 Regular Meeting.

Discussion regarding the approval of a Mediation Agreement with the Honorable Michael A. Donio, Judge of Superior Court of New Jersey (Retired) to serve as Mediator in the matter of a contract/payment dispute with Mathis Construction Co., Inc. regarding Contract 55.

James Waldron explained this contract was originally awarded on January 11, 2017. During construction, there were material and substantial delays in the completion of the work by the contractor. In the opinion of our Engineer, there were many instances of deficient and unacceptable work that needed to be corrected. Eventually, the work was completed and deemed acceptable by the Engineer. The final documents were submitted in April of 2019, which the contractor refused to sign, and have yet to be submitted, which are required for closeout and final payment, per the contract. The conduct of the contractor resulted in substantial increased engineering costs amounting to \$38,923.48. The contractor was notified that the fees would be paid unless they could make a demonstration of cause as to why they shouldn't be paid. No response was received from the contractor. The invitation to complete the closing documents was ignored. In early 2020, Council approved payment to the Engineer, holding back the amount to Mathis. Mathis recently filed suit in the Superior Court of New Jersey for final payment.

James Waldron (continued) The contract provides that before a lawsuit can be filed, all parties must go through an alternative dispute resolution process, which is what brings us to the action being recommended to Council today. There has been agreement on retired Judge Donio to serve as a mediator, whose fees will be \$475.00 per hour, divided equally between the Borough and the contractor. Council is being asked to approve the mediator selection, mediator agreement, and initial payment of \$2,000.00. It is anticipated mediation should not consume more than 15 hours.

Councilwoman Hudanich asked if the Borough Clerk is in receipt of a Certification of Funds from the Chief Financial Officer.

C. Danielle Nollett responded yes; the appropriate Certification of Funds was received from the Chief Financial Officer after disseminating the agenda packets to Borough Council.

Council President McCorristin asked for the total amount.

James Waldron stated the Borough owes Mathis a total of \$31,022.44, which has been tendered. However, Mathis is claiming the Borough owes in excess of \$103,000.00. Mathis is looking for the Borough of Avalon to absorb the additional \$38,923.48 that was paid to Mott MacDonald.

Councilwoman Hudanich asked, for clarification purposes, if the delays were on the contractor's part.

James Waldron replied yes.

Councilwoman Hudanich asked for the reasoning behind the 15-hour estimate for the mediator.

James Waldron explained Administration is suggesting 15 hours as a worst-case scenario. It is expected that mediation would take much less time.

Councilwoman Hudanich advocated the importance of prudent file-keeping during this process to ensure the Borough's investment, time and contract is mediated properly.

James Waldron agreed with Councilwoman Hudanich.

Council agreed to proceed with a Resolution to be prepared for the January 27, 2021 Regular Meeting.

Presentation by Donna Rothman of the Avalon Environmental Commission 2020 Annual Summary and 2021 Work Plan

Donna Rothman thanked Council for their time and reported the Avalon Environmental Commission accomplished the following in 2020:

Continued implementation of the Dune Vegetation Management Plan (DVMP), which had been approved by Avalon Borough Council on December 23, 2009, detailed as follows:

- During 2020 there were 5 active DVMP:
- 2 new projects that included removal and replanting of approved plant material
- 1 active project concluded its 3 years of monitoring.
- 1 maintenance pruning project was completed
- Approximately 24 blocks of the Borough's dunes have been restored through the DVMP, which accounts for 33% of the Dune system
- A new pruning procedure was developed for DVMP

The Environmental Commission reviewed the Vegetation Management Plan by Lomax Consulting Group, which includes tree management assessment for public streets, parks, and open spaces. Proposed changes to the Landscape Ordinance and other Ordinance issues have been discussed in the Environmental Commissions advisory capacity; including, but not limited to, living fences and artificial turf. A new Acceptable Plant Materials list has also been reviewed and developed. There are now 4 separate lists: Borough Acceptable Plant Materials, Living Fence List, Invasive and Nuisance Plant List, and Approved List of Dune Vegetation. The Butterfly and Pollinator Garden Sign created by Taylor Design Group has also been reviewed and edited. In October 2020, the Environmental Commission hosted the Annual Dune Grass Planting. Despite the restrictions relating to the COVID-19 pandemic, the event drew the largest number of participants in Borough history, all successfully socially distanced. A dialogue was initiated with the Avalon School to develop a Dune Grass program, with hopes to implement the program in the fall of 2021 or in 2022, depending on COVID-19 guidelines. The Environmental Commission will take over the New Jersey Tree Recovery Free

Donna Rothman (report continued) Seedlings Program in 2021, formerly administered by Sue Keen. The Sustainable Jersey program was reviewed, and commentary was offered. Approximately 30 notification letters and plans from the New Jersey Department of Environmental Protection for Land or Waterfront Development were reviewed. The Bay Park Marina Project was also reviewed, with comments offered to Scott Wahl. The Tree Committee, a committee within the Environmental Commission, directed the planting of 15 new trees on 8 Dune Drive Islands. A review of the Community Forestry Management Plan has begun, with new goals being established for 2021. This review allows for a 90% payout of the CSIP Grant to the Borough. The Environmental Commission has not formerly developed a yearly work plan. A review of ongoing environmental projects for 2021 was given, along with their status, as well as potential projects that may be addressed in the 2021 calendar year. There are hopes to focus primarily on educational initiatives in 2021.

Councilwoman Hudanich complimented Donna for her commitment and thanked her for a very informative presentation with an educational focus, which is what Avalon needs as an environmentally-friendly town. She suggested a potential collaboration with the Technical District of Cape May County schools, through the Cape May County Mitigation Plan, which is a subset of County waterways and natural resources.

Council thanked Donna Rothman for her time and dedication to environmental initiatives.

Discussion regarding additional line-item transfers and amendment to Resolution No. 224-2020 further increasing the “Not to Exceed” amount in the Blaney & Karavan Professional Services Contract.

James Waldron explained as of December 16, 2020, the Borough was in receipt of invoices from Blaney & Karavan totaling \$55,002.00, which exceeded the original not-to-exceed amount in the contract of \$30,000.00. Pursuant to Resolution 224-2020 adopted that date, the not-to-exceed amount was increased accordingly and Resolution 13-2020 authorizing the Professional Services Contract (PSC) with Blaney & Karavan was subsequently amended.

Since the adoption of Resolution 224-2020, three additional invoices for 2020 legal services were received, detailed as follows:

- November 2020 = \$23,417.50
 - December 2020 = \$18,966.00
 - \$1,290.50 for Mathis matter in November 2020
 - \$1,500.00 for Mathis matter in December 2020 (estimated – no invoice received as of 1/11/2021)
- TOTAL = \$45,174.00

Further transfers and a further amendment to the PSC is requested and scheduled for official action at this meeting to increase the not-to-exceed amount. This amount was budgeted in the 2020 Annual Budget, but not appropriated, and will be funded by line-item transfers from other line items with a surplus.

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

Discussion regarding an extension of the Families First Coronavirus Response Act (FFCRA)

Scott Wahl explained the Families First Coronavirus Relief Act (FFCRA) mandates paid leave to employees for the COVID-19 related reasons specified in the Act. In the Consolidated Appropriation Act 2021 which became law December 27, 2020, Congress allowed the FFCRA leave mandate to sunset effective December 31, 2020. However, Congress retained the FFCRA tax credit through the first quarter of 2021. This means that covered employers, including the Borough and other public sector employers, may voluntarily provide FFCRA leave to eligible employees through March 31, 2021. The FFCRA generally applies to public employers with up to 499 employees and it also applies to private sector employers, with certain exceptions. The tax credit does not apply to public sector employers for obvious reasons – their tax-exempt status. Even though the FFCRA leave mandate has expired, employers still must pay employees for any qualifying leave taken through December 31, 2020, as the Department of Labor pointed out in its latest FFCRA Questions & Answers. Some employers may also have continuing obligations to provide paid COVID-19 leave in 2021 under state law. It has been determined that most municipalities in Cape May County are taking action to extend the FFCRA through March 31, 2021. The Mayor and Administration are of the opinion that Avalon should extend FFCRA through March 31, 2021, as doing so will promote public safety by requiring employees exposed to COVID-19 infection the ability to remain isolated without imposing financial hardship.

Councilwoman Hudanich stated the original FFCRA gave 80 hours or 10 days, which has expired as of December 31, 2020. The FFCRA began to issue tax credits for any employer who voluntarily participated; however, Avalon is not eligible as a Municipality. Notwithstanding, she expressed the opinion Avalon is keeping the workforce safer by encouraging people to do the right thing by following the Center for Disease Control (CDC) and New Jersey Department of Health Guidelines. She expressed concerns that extending this program through a specific date may lead employees to believe they have the ability to travel, with their quarantine requirements upon return home covered by this act. She stressed the importance of drafting the policy to appropriately address abuse of policy and award of these paid hours if the employee has tested positive or come in close contact with an individual with COVID and must quarantine as a result.

Scott Wahl explained employees who voluntarily travel would not qualify for relief under FFCRA.

Councilwoman Juzaitis agreed with Councilwoman Hudanich that the policy needs to be more defined.

Scott Wahl indicated all employees have been notified of the travel bans. If an employee makes a conscious choice to travel to a "no travel state", they must use their own time when quarantining upon return.

Nicole Curio added the travel example would not fall under the FFCRA, which includes very specific categories when evaluating eligibility. By implementing this policy to be specifically in line with the FFCRA, the Borough is covered.

Councilwoman Juzaitis explained COVID is extremely difficult especially when people are exposed and exposures can last up to two months, while advocating the importance for the Borough to have clear parameters to avoid abuse of the Act.

Councilwoman Hudanich suggested replicating the verbiage from the FFCRA.

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

Public Comments:

Council President McCorristin explained there was an issue with the Planning/Zoning Meeting on January 12, 2021. He asked Scott Wahl to discuss this in further detail before opening the meeting to public comment.

Scott Wahl read the following statement regarding the Planning/Zoning Meeting:

Borough Council is aware of last night's meeting involving the Avalon Planning and Zoning Board and a particular application that drew the interest of members of the community. To be clear, the policies and procedures of the Board are completely independent of those of Borough Council. The Board establishes its procedures consistent with State statutes. The Board uses the same technology as Council does during the public health emergency with the conference call option to listen and offer public comment. The independent policies by the Board and Council are wholly consistent with state guidance from the Department of Community Affairs and in some respects, exceeds them. The Board began its meeting with the allowance of 100 people to participate and listen simultaneously to the meeting. No other application had generated any interest of 40 individuals. Shortly after the meeting started, the Board Secretary noticed that capacity was reached and immediately reached out to the Technology Officer to increase the capacity to at first 250 and then immediately to 500. For a period of less than ten minutes, some who attempted to call in got a meeting full message; the meeting lasted about six hours. I was contacted by two members of the public about this and received assurance from the Technology Officer that it was corrected in under ten minutes and he was in touch with the provider of the service within two minutes of being contacted by the Secretary. I then put a message on the PZ Board page of the website alerting the public if they tried and could not get through, try again and you will have no problem. I received a few emails of appreciation for that effort, and personally contacted the individuals who expressed to me they could not get through.

Last night, there were an unprecedented 658 individual phone calls that were received by the Borough with callers staying on the call for different periods of time. The highest number of calls at any individual time was 280, according to the Board Secretary. Public comment was accepted by the Board Chairman from any member of the public who did not speak at the December meeting regarding this application. The use of this system rests with the Board. The Borough is aware of Zoom and other video platforms that have been compromised during municipal and county public meetings that have ground those meetings to a halt. This platform prohibits that from happening. The Board meeting ended after it voted six to one against the application.

Councilman Wierman confirmed the accuracy of Scott Wahl's statement and added the Planning/Zoning Secretary went through the call list twice during the public comment portions of the meeting to try and give all an opportunity to speak.

Council President McCorristin opened the meeting to public comments and asked anyone wishing to comment, to please come forward and state their name and address for the record.

Jean Carter, 1958 Ocean Drive, voiced her frustration with the technical difficulty during the Planning/Zoning meeting, specifically background noises, interruptions, and side conversations. She referenced the increase in digital media and spoke in support of livestreaming the public meetings.

Sheila Straub, 3886 Dune Drive, also voiced her disappointment with the technical difficulty during the Planning/Zoning meeting and asked why the Planning/Zoning meetings were livestreamed during the summer months of 2020, but are no longer available via livestream.

Councilman Wierman stated the Planning/Zoning Board has not livestreamed their meetings; however, a member of the public was livestreaming the meetings of their own accord, using their personal electronic devices.

Rick Robinson, 6448 Ocean Drive, complimented the Planning/Zoning Board for their administration of the January 12, 2021 meeting, as it was a large meeting that drew a great deal of interest of members of the community. He agreed with the previous comments and spoke in support of utilizing a different platform for broadcasting the meetings, while voicing his frustrations with members of the public not being muted by the mediator of the conference call during testimony.

Council President McCorristin replied Council will take this under advisement and thanked Rick for his comments.

Michelle Diliberto, 66 E 20th Street, thanked Council for their service and dedication to Avalon, and noted she recently mailed a letter to all Council members in addition to the Mayor. She spoke about the recent Planning/Zoning Board meeting, and expressed the opinion it was not adequately made available to the public for all the reasons previously stated by other members of the public. She noted the many Avalon property owners are not locally available due to the pandemic and the winter months; therefore, she urged Council to consider livestreaming meetings.

Martha Wright, 632 7th Street, recognized the efforts of Scott Wahl, Kimberly Mastriana, and the IT Team during the Planning/Zoning meeting on January 12, 2021 for their quick response to allow the public onto the conference call line within approximately 15 minutes. While the public comment period was open several times throughout the meeting, she reported that she and two other residents were denied their right to comment during the meeting. She explained her comments were entered into the record during the December 2020 Planning/Zoning Board meeting concerning this application; but expressed unhappiness that she was unable to comment in response to the new testimony offered at the recent meeting. She announced to those listening that she has been livestreaming the public meetings for approximately two years, of her own volition. She spoke in strong support of livestreaming all public meetings. She brought to Council's attention the Planning/Zoning Board did not allow written comments submitted to the board in advance of the meeting to qualify as public comments, which is in violation of the Department of Community Affairs rules changed on October 6, 2020.

Travis Marshall, 897 21st Street, encouraged Council to consider taking proactive measures to address the issue of the livestreaming in the community, and expressed his intent to independently hire a company to broadcast the public meetings of the Borough of Avalon and asked for Council's cooperation if this is done.

Michelle Diliberto, 66 E 20th Street, interrupted and commented on the noise during public comment.

Councilwoman Hudanich explained members of the public cannot be muted during public comment and explained the interruptions are not coming from the Borough's software, but rather participating individuals who have not muted their lines. She noted the Borough's software does have the ability to mute the public; however, during the Planning/Zoning Board meeting, there was an overabundance of callers arriving onto the call at one time, creating an arduous task for the moderator of that meeting to mute incoming callers. She noted Council understands the public's frustrations and requests.

Multiple unidentified members of the public began speaking through the teleconferencing system airing grievances about the phone system and the inability to properly hear the public comments being offered as a result.

Travis Marshall, 897 21st Street, reassured all he would help to resolve this issue.

Council to check over the agenda for the Regular Meeting.

Council proceeded to check over the agenda for the Regular Meeting.

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

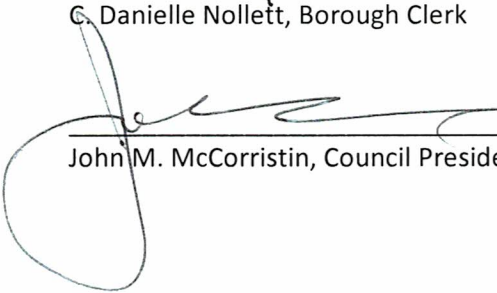
<u>ROLL CALL VOTE:</u>	Councilman Deever	Aye
	Councilwoman Hudanich	Aye
	Councilwoman Juzaitis	Aye
	Councilman Wierman	Aye
	Council President McCorristin	Aye

Work Session adjourned at 4:53 p.m.

Respectfully submitted,



G. Danielle Nollett, Borough Clerk



John M. McCorristin, Council President