

**BOROUGH OF LONGPORT COMMISSION MEETING  
MUNICIPAL BUILDING, 2305 ATLANTIC AVE  
LONGPORT, NJ 08403  
WEDNESDAY, JULY 24, 2019 – 4:30 PM**

Meeting was called to order and the flag salute was conducted.

Municipal Clerk Kyle read the Opening Statement pursuant to the Open Public Meetings Act.

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

Engineer Carter, Solicitor Agnellini, CFO Kelly, Richard Hirsch, Paul Miola, Dave Miller, Bruce Funk, and Municipal Clerk Kyle also in attendance.

Emergency exit/fire drill/ public speaking limit – Mayor Russo.

Presentation to Beach Tag Design 2019 Winners – Seasonal Beach Tag Design Winner – Matthew Sheridan and Senior Beach Tag Design Winner – Mary Kate Casey.

Presentation by Paul Miola, CPCU, ARM, Executive Municipal JIF Strategist, Atlantic County Municipal Joint Insurance Fund. Mr. Miola provided copies of his presentation to the Governing Body. He discussed the state of the borough's joint insurance fund. Mr. Miola noted that Longport has received approximately \$573,584 in dividends from the MEL-JIF. He noted that the borough has a good safety record. He also provided an overview of how the MEL-JIF works, adding that it has a very low overhead. Mr. Miola noted that the JIF now has a new employment practices help line to help limit exposure to costly claims and lawsuits. He discussed the MEL Cyber Risk Management Plan and how the borough is in compliance. He also noted that the Mel-JIF also places an importance on wellness. Mr. Miola discussed the Tenant Users Liability Insurance Policy program. He also discussed upcoming land use training. Mr. Miola also discussed new legislation passed regarding Sexual Abuse and Molestation, including that the statute of limitations has changed for making claims.

Commissioner Leeds commended borough employees for making wellness a priority.

Solicitor Agnellini discussed the TULIP program, including a requirement that the Borough be named as Additional Insured.

Engineer Carter discussed Mel-JIF 'recommendations' versus 'requirements,' adding that he would like to see the Mel-JIF move towards making certain recommendations into requirements. Mr. Miller noted that it could be made mandatory by the Governing Body.

Approval of minutes- Municipal Clerk Kyle requested a motion to approve the minutes of the June 27, 2019, Commission Workshop Meeting. Commissioner Leeds made a motion, seconded by Mayor Russo to approve the minutes for the June 27, 2019, Commission Workshop Meeting. ALL AYES- none opposed. Comm. Lawler – absent.

DISCUSSION – Ordinance 2019-13 – An Ordinance Authorizing Execution of a Deed of Dedication and Perpetual Public Access Easement Over Street Ends and Beach for Public Access to Tidal Waters in the Borough of Longport, Atlantic County, New Jersey. The Introduction/ First Reading of this Ordinance is scheduled for August 7, 2019 at 4:30 pm. The Second Reading/ Public Hearing is scheduled for August 21, 2019.

Mayor Russo requested that Solicitor Agnellini chair the discussion of Ordinance 2019-13 – An Ordinance Authorizing Execution of a Deed of Dedication and Perpetual Public Access Easement Over Street Ends and Beach for Public Access to Tidal Waters in the Borough of Longport, Atlantic County, New Jersey. Solicitor Agnellini explained how an ordinance becomes law. He noted that an ordinance must have an introduction and first reading and then be published, followed by a second reading and public hearing at a subsequent meeting and be published again prior to becoming law.

Solicitor Agnellini explained that the borough does not normally hold public discussion on an ordinance prior to introduction, but that the Governing Body wanted to be sure the public had time to understand the ordinance as numerous questions had been raised. He discussed the borough's need for a general beach maintenance permit that expired in 2017, and that permit requires a Municipal Public Access Plan to be submitted and approved. He noted that the State had denied the permit in September 2017. He noted that the borough felt that the access plan map approved by the State for the Army Corps of Engineers Dune Project fulfilled that requirement, but the NJ Department of Environmental Protection did not agree. Solicitor Agnellini noted that the State's requirement for public access easements was inserted due to municipalities in the northern section of the state that were vacating street ends to limit public access to the beach. He noted that Longport did not have the same issues as those municipalities, but that this was a uniform requirement.

He explained that part of the Municipal Public Access Plan includes a deed of easement that does not allow a municipality to limit public access to the beach and tidal waters. He explained that the Governing Body has been working with the NJ DEP to try and move forward on this issue. He noted that the original ordinance was based on a model provided by the NJ DEP. He noted that there was criticism from some residents over its broad language. Solicitor Agnellini agreed with that concern and he is working on a new draft to limit the language. He explained that he is working on an ordinance that would hopefully avoid litigation with the NJ DEP. He discussed the Public Trust Doctrine and how his recommendation is to provide the NJ DEP with some type of easement to protect public access points to tidal waters.

Solicitor Agnellini also discussed two items that are not in the draft. He noted that the initial first reading was approximately two months ago, and that the ordinance was postponed a couple of times. He added that this was due to recommendations from the NJ DEP.

He explained that the State is requiring an easement over the beaches. He noted that he has concerns with granting an easement over the beach due to some residents having rights to the highwater line and that this highwater line changes. He is suggesting granting an easement over the street ends to the ocean. Solicitor Agnellini explained that you would not be able to develop anything without a CAFRA permit in the area. He stated that he is not sure how the NJ DEP will respond to his recommendation.

The second item he discussed includes the initial easement being over the entire street end, including the sidewalk and street. He suggested limiting the width of that easement, which could help alleviate

some of the concerns the public has. He added that he has not presented this new suggestion to the NJ DEP so he is not sure if it will be accepted. Engineer Carter suggested a width of eight feet.

Solicitor Agnellini noted that the NJ DEP has rules that they must enforce uniformly. He noted the revised ordinance could be presented to the NJ DEP to see how they will receive it. He explained that the borough has been maintaining the beach without a permit. He added that the borough received a violation from NJ DEP in February. He reiterated the need to cooperate with the NJ DEP. He noted that thus far the NJ DEP has not issued a new violation, but they could. He discussed that several questions had been submitted to him and that he is trying to address them all. He also discussed the ordinance exhibits/addendums posted on a board for the public to review.

Mayor Russo asked Commissioner Leeds what he would consider a reasonable width for an easement at the street ends. Commissioner Leeds noted that he still had several questions before getting to that point. He discussed the bay side and what would be considered access there. He noted that if it got to that point, he was agreeable to the same width as the Army Corps of Engineers dune crossover access width of eight feet.

Solicitor Agnellini noted that the bayside would mostly consist of visual access. He noted that the borough did have a request to add steps to a bayside bulkhead for access to the beach area for kayaks. He explained that access cannot be blocked. He stated that most street ends would be visual access points. Engineer Carter explained that steps would not be added to every bay side street end. Engineer Carter further explained that one area was added because access at the Point was dangerous and a new access point was added at 13<sup>th</sup> Avenue. He noted that the steps would be removed in the winter. Engineer Carter noted that some residents had concerns that structures would be built in the easement areas, but he explained that would not be the case with the new limiting language.

Commissioner Leeds discussed the Public Trust Doctrine and how it requires 'reasonable and meaningful access,' which he believes the borough already provides. Solicitor Agnellini agreed with Commissioner Leeds and noted that that was the borough's initial position. However, the NJ DEP did not agree with the borough's position and they are requiring the easement. Solicitor Agnellini also discussed passing an ordinance that would require the NJ DEP's approval before vacating any street end, but the State was not willing to accept that type of ordinance.

Solicitor Agnellini stated that the borough could litigate the NJ DEP's requirement. He added that it could be costly and ultimate result in the borough being required to implement more measures stipulated by the State. He added that Stone Harbor has already adopted the easement ordinance. He noted that more municipal beach maintenance permits will begin to expire and they will soon be addressing the same issue. He discussed that Margate's will be expiring soon and they are watching how Longport addresses the easement issue. Solicitor Agnellini discussed potential future fines from the NJ DEP and the possibility of the beaching being shut down.

Dennis DiFlorio of 118 S. 18<sup>th</sup> Avenue, stated that he just learned about the ordinance. He wanted to understand the main points of the ordinance. He discussed that in order for the borough to maintain the beach the State is requiring ownership of the beach and bayside access points. Solicitor Agnellini explained that it isn't ownership, but access to the beach and tidal waters. Solicitor Agnellini explained the State doesn't want the public's ability to access these areas to be limited. Mr. DiFlorio wanted to know if the borough is giving up its rights regarding what is done in those areas. He questioned if the State would then have the right to place restrooms, parking, or public showers in those areas. Solicitor

Agnellini discussed that he revised the ordinance to limit access only to transit access. He added that the previous ordinance did allow for flexibility of interpretation. He also discussed restroom access including the borough did open up borough hall to allow for bathroom access over the weekends during the summer season. He added that this is a separate issue.

Mr. DiFlorio was concerned about what rights would be given over to the State. Mayor Russo noted that the borough has accepted State and Federal funds and that there must be public access. Mr. DiFlorio asked if the borough is turning the area into a State park, why does the borough have to pay for it all. Mr. DiFlorio was concerned about giving the street ends away for perpetuity. He was also concerned about borough funds being used to maintain the area. There was further discussion on what an easement was.

It was explained the new ordinance is limiting what can be done in the easement area. Mr. DiFlorio asked if the State can dictate more parking or building a restroom in front of someone's home. Solicitor Agnellini stated that the way the ordinance is drafted is limiting enough that it only allows people to walk across for access. Mr. DiFlorio is supportive of public access, but he wanted assurance that in the future, amenities would not be built in the easement areas. Solicitor Agnellini noted that a CAFRA permit would be required to build anything in those areas. Solicitor Agnellini discussed new legislation that allows the NJ DEP to have a lot of discretion, and he was unsure where that legislation was headed.

Engineer Carter did note that language could potentially be changed in the future to mandate a public restroom every quarter mile on the beach. He added that the argument is with the NJ DEP, not the borough. Mr. DiFlorio requested that the ordinance be tabled until that the public has more time to form a public-private partnership to find a better path forward for future generations. Engineer Carter cautioned that this could put the borough in jeopardy while it is trying to maintain the beach and that time was of the essence. Solicitor Agnellini noted that the concerns brought up are legitimate, but he also noted that if the State does shut down the beach, that there will be a large segment of the population that will be upset.

Anthony Cerrone, of 14<sup>th</sup> Avenue and the Bay, stated that he had to pay to maintain his bulkhead and noted that he owns his bulkhead, adding that he would not provide an easement over his bulkhead. Solicitor Agnellini noted that he may have had the responsibility to maintain the bulkhead, but he did not own it. He further explained that the borough has taken back maintenance of the bulkheads. Mr. Cerrone asked if Solicitor Agnellini had documentation to support what he said. Mr. Cerrone asked if steps would be added over the bulkhead. Engineer Carter noted that access was only added at one bulkhead. Solicitor Agnellini noted that the access points are visual access points, and signs would indicate no swimming. He noted that there was one exception at 13<sup>th</sup> Avenue.

Carmen Romeo of 1807 Beach Terrace, discussed the eight foot wide easement to cross over the dune at the beach. Solicitor Agnellini discussed providing for an eight foot wide access easement to the beach and bay side. Mr. Romeo asked if this concept had been presented to the NJ DEP. It was noted that it had not been. Engineer Carter noted the easement would be located at the center of the street end. He further explained that the NJ DEP is requiring this because several northern NJ municipalities have vacated street ends. He further explained that under the NJ Department of Transportation you could not vacate a road without prior approval from the NJ DOT commissioner. He said that the borough suggested doing the same but with prior approval from the NJ DEP commissioner. Mr. Romeo was generally in favor of an access point limited to eight feet wide. Mr. Romeo asked what other

municipalities granted this access to the state. Solicitor Agnellini noted that Longport would be one of the first.

Mr. Romeo suggested that the borough fight the NJ DEP on this issue and join together with other coastal communities and have a class-action lawsuit. Mr. Romeo noted that if the ordinance restricts the width and prohibits parking, and the building of structures, that it seemed to be a fair compromise. Mr. Romeo, again, suggested a class action lawsuit. Solicitor Agnellini explained that it could be risky litigation. Commissioner Leeds suggested reaching out to the NJ League of Municipalities. Mayor Russo noted that the borough has a lot of access points and that parking areas had been added and that the borough has been very proactive regarding public access. Mayor Russo made it clear that he opposed parking on certain streets because of Beach Terrace as it is not designed for heavy traffic. He noted that he could not argue the same for Atlantic Avenue. Mr. Romeo's main concern was granting an easement to the State in perpetuity. He suggested joining together with multiple communities. Solicitor Agnellini noted that he reached out to Margate and Ventnor at the start and that their permit did not expire yet, so they were waiting to see how Longport handled the permit.

Jim Hammerstedt of 111 N. Evergreen Avenue, he explained that he was there on behalf of the Longport Citizens Alliance representing full time and seasonal residents who are deeply concerned about this issue. He noted that the group has hired outside counsel to monitor this issue.

Peter Isen of 1301 Beach Terrace, asked Solicitor Agnellini to explain what is happening at the end of 13<sup>th</sup> Avenue. Solicitor Agnellini explained that a resident asked for access to the bay at 13<sup>th</sup> Avenue to launch his kayak. Mr. Isen asked where they would park. It was noted that the resident lived on that street.

Engineer Carter explained that the previous bulkhead was very low, now there is a higher bulkhead and the resident asked for steps for access. Mr. Isen asked if it was a public safety issue. Engineer Carter explained that the steps would be removed in the winter. He stated that the steps would be installed soon. Commissioner Leeds discussed this street end and noted that under the Public Trust Doctrine that borough could be required to install steps at every street end for access to the bay front. Mr. Isen was concerned about setting a precedent with the steps. Engineer Carter discussed the borough's wish to improve access at the Point and add parking. He read an email from the State noting that the area at the Point is a dune area and it cannot be disturbed because it is environmentally sensitive. Engineer Carter noted that he is frustrated with his dealings with the NJ DEP. He noted that the person who requested the kayak access explained that he would be happy to use the Point area if it was made safe, but the borough is not permitted to make improvements in that area, so it agreed to providing steps at 13<sup>th</sup> Avenue. Engineer Carter explained that if the area becomes a kayak beach, that he would recommend removing the steps. Mr. Isen asked if the Bayfront property owners were notified. Mr. Isen suggested that O2019-13 be tabled and it not be placed back on the agenda until the general public has had time to examine it.

Solicitor Agnellini was asked if he would be willing to meet with the Citizen's Alliance's attorney. Solicitor Agnellini agreed to meet with them. He wanted everyone to understand the risk of delaying the ordinance. There was discussion on what would happen if the NJ DEP issues the borough a violation or shuts down the beach. Mr. Romeo discussed reaching out to local legislators for assistance on this issue. Mayor Russo discussed that the borough tried to address the NJ DEP's requirements through an ordinance, but the State is insisting on an easement.

Scott Stetzer of 25 S. 33<sup>rd</sup> Avenue said that a precedent has been set with the width of the dune crossover and that the borough should mirror that language in the ordinance. Mr. Stetzer had questions about some street ends in the borough. Solicitor Agnellini noted that it had to be perpendicular access to the beach or bay. Mr. Stetzer noted that the borough should get an injunction to continue to clean the beach. He noted that the borough, as the first municipality to have its permit expire, is serving as a guinea pig for other communities. Mayor Russo explained that 45 municipalities have applied for the same permit and that five have been approved. Solicitor Agnellini noted that not everyone views the NJ DEP as a bully, some see it as defending access to the beach and tidal waters for those that might not be able to afford to live on the beach or bay. Mr. Stetzer was in favor of protecting true beach access, which he did not believe was the case in Longport. He felt that it was more about the borough being able to access the beach in order to maintain it, noting that the borough has ample public access. He suggested fighting back against the NJ DEP.

Joel Goldman of 108 S. 15<sup>th</sup> Avenue noted that the general public sentiment is that it does not want to give up its rights in this easement ordinance. He noted that the community does offer access, including 30 blocks to the beach and did not want to give up more territory. He was in favor of the 8-foot wide access easement. Mr. Goldman noted that the public wishes to have more input on this topic.

Sabrina Blankenship 1204 Atlantic Avenue pointed out several typos in the ordinance. She noted that there was a “th” missing on 12th avenues, she also noted that the labeling of the addendum needs to be addressed. She also suggested adding north of south to the street descriptions. Ms. Blankenship also discussed surfing beaches and how the borough designates beaches. Engineer Carter noted that an asterisk could be added for summer season surfing beaches. Ms. Blankenship asked if ‘Atlantic Avenue Jetty Park’ if that is the area’s official name. She also suggested a No Surfing sign be added at the jetty area. Ms. Blankenship asked if the 13<sup>th</sup> Avenue steps to the bay would be indicated on the public access plan. Solicitor Agnellini did not think so. Ms. Blankenship asked about the steps on a bulkhead near the condos and said that they are very dangerous. Solicitor Agnellini noted that he would be addressing this issue.

Ordinances – First Reading/ Introduction of Ordinance O2019-14 – An Ordinance Amending 2019-04 Salary, Wages, and Compensation in year 2019. The Second Reading and Public Hearing is scheduled for August 7, 2019 at 4:30 pm.

Number	Title
14	An Ordinance Amending 2019-04 Salary, Wages and Compensation in Year 2019
Purpose	The purpose of this Ordinance is to amend the salary, wages and compensation in the Department of Public Affairs and Public Safety for the deputy court administrator.
Motion	Motion – Mayor Russo, seconded by Commissioner Leeds to approve Ordinance #O2019-14.
All in Favor	ALL AYES. None opposed. Comm. Lawler – absent.

Public Comment on listed resolutions:

Ms. Blankenship discussed visual access and people fishing. She noted that there would need to be signage not allowing people to swim.

No comment on the resolutions.

**RESOLUTIONS**

Number	Title
2019-90	A Resolution Authorizing A Shared Services Agreement with the Atlantic County Utilities Authority to Perform Basin Clean Out Services MOTION - LEEDS, SECOND- RUSSO, All AYES- none opposed. Comm. Lawler – absent.
2019-91	A Resolution to Extend 3 <sup>rd</sup> Quarter 2019 Tax Due Date MOTION-LEEDS, SECOND-RUSSO, All AYES- none opposed. Comm. Lawler – absent.
2019-92	A Resolution Authorizing a Contract with Forerunner Industries, Inc, for CRS Software <i>*Comm. Leeds requested more information on this software. Mr. Funk discussed the new software and explained this is the only company that provides this type of software.</i> MOTION-RUSSO, SECOND-LEEDS, All AYES- none opposed. Comm. Lawler – absent.
2019-93	A Resolution Authorizing A Change Order to a Non Fair and Open Professional Services Contract for Bond Counsel <i>*CFO Kelly explained that with a bond sale last month that additional funds were required as they went over the expected amount</i> MOTION-LEEDS, SECOND-RUSSO, All AYES- none opposed. Comm. Lawler – absent.

**BILL PAY LIST& FINANCIAL SUMMARY REPORT**

Commissioner of Finance and Revenue, Jim Leeds, Sr. asked if there were any questions on the bill pay list of July 24, 2019. There were none. MOTION – LEEDS, SECOND – RUSSO. ALL IN FAVOR- ALL AYES/ NONE OPPOSED. Comm. Lawler – absent.

Commissioner of Finance and Revenue, Jim Leeds, Sr. asked if there were any questions on the Financial Summary Report. There were none. MOTION – LEEDS, SECOND – RUSSO. ALL IN FAVOR- ALL AYES/ NONE OPPOSED. Comm. Lawler – absent.

**COMMISSIONERS REPORTS**

Mayor Russo noted that one of the members of the planning board provided the Mayor with a list of addresses with lawn sprinklers that were operating during the rain. He also discussed enforcement of this ordinance. Solicitor Agnellini noted that all lawn irrigation systems must be equipped with rain sensors.

Mayor Russo discussed a note from the coordinator of the fireworks display sponsored by the Longport Volunteer Fire Department, noting that they are short in funding it. Mayor Russo discussed the history of the date of the fireworks and noted that fireworks would be held on August 10<sup>th</sup>.

Commissioner Leeds discussed two construction sites in the borough that were in deplorable condition and that they needed to be addressed.

**ENGINEER'S REPORT**

Engineer Carter - no further report.

**SOLICITOR'S REPORT**

Solicitor Agnellini - no further report.

**PUBLIC COMMENT**

Joel Goldman 108 S. 15<sup>th</sup> Avenue asked the Mayor about the beautification of the area from 15<sup>th</sup> through 16<sup>th</sup> avenue near the bulkhead in coordination with the nearby condo association. Mayor Russo noted that there were irrigation concerns. He noted that he has not received an update from the Seaview Condo Association. Mayor Russo explained that they will prepare a plan and submit to the Governing Body for review. Mr. Goldman noted that the 'No Parking' signs need to be replaced. It was noted that the signs had been replaced.

There was no further comment from the public.

**ADJOURNMENT**

MOTION- LEEDS, SECOND-RUSSO. All AYES- none opposed. Comm. Lawler – absent.

(6:30 pm)