

December 21, 2009

The regular meeting of the Mayor and Council of the Borough of Bay Head was held on December 21, 2009 at 7 PM in the Council Chambers of the Borough Hall.

Mayor Curtis called the meeting to order and welcomed everyone. He asked everyone to stand and join with him in the Pledge of Allegiance to the Flag.

The roll was called for attendance. Present were Mayor Curtis and Councilmembers Barnes, Glass, DeFilippis, Urner and Borough Attorney Jean L. Cipriani. Councilmember Berko and Green arrived a few minutes late.

Mayor Curtis read the following statement:

Ladies and gentlemen, pursuant to the applicable portions of the New Jersey Open Public Meetings Act, adequate notice of this meeting has been given. This meeting is listed on an annual schedule of meetings of this Governing Body which was posted in the main corridor of the Borough Hall and was published in *The Ocean Star*.

Councilmember Glass moved to approve the regular minutes of December 7, 2009. The motion was seconded by Councilmember Urner and passed on roll call vote. YEAS: Glass, DeFilippis, Urner. NAYS: None. NOT VOTING: Barnes.

Councilmember Urner moved to approve the executive minutes of December 7, 2009. The motion was seconded by Councilmember Glass and passed on roll call vote. YEAS: Glass, DeFilippis, Urner. NAYS: None. NOT VOTING: Barnes.

Mayor Curtis: Waste Management called apologizing that they didn't get to all homes today. Access to the cans need to be made. Three Planning Board members have opted not to renew their tenure. Bill Taylor has served 4 or 5 years. Don Haurie, current Chairman has served over 18 years and Gail Heyer has served 15 years. On behalf of Council I would like to thank them for their many years of service. Hannah Helbig, Clerk to the Planning Board will also be leaving and I would like to thank her also.

Mayor Curtis called for Reports of Standing Committees.

Councilmember Barnes, Public Services, had no report.

Councilmember Glass, Public Safety, had no report.

Councilmember DeFilippis, Public Works: I would like to thank public works for the great job they did clearing the streets of snow over the weekend. They worked over 30 hours Saturday and Sunday.

Mayor Curtis: Yes, I would like to thank Chip Tillson, Doug Applegate and Tom Linton. They did do a great job.

Councilmember Urner: Yes, I understand you paid for Chip's entertainment system.

Mayor Curtis called for Ordinance for Second Reading, Public Discussion and Vote.

Councilmember Urner offered Ordinance 2009-11 entitled:

ORDINANCE OF THE BOROUGH OF BAY HEAD, COUNTY OF OCEAN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER 204 OF THE BOROUGH CODE ENTITLED "SOLID WASTE"

Mayor Curtis: The main purpose of this ordinance is to comply with language Ocean County requires concerning their recycling program which we participate in.

Councilmember Barnes: My main objection to the ordinance is 204.5 – Placement for Collection. Many residents came out in the summer and discussed this topic with Council. I feel the homeowner should have some say as to the safest place to place their garbage. I am very opposed to 204.5 Section A. (3) and I recommend the ordinance be tabled.

Ms. Cipriani: If it is tabled it will die because it can't cross the year. If changes are made that are not substantial it can be voted on tonight. If the changes are substantial then the ordinance would have to be republished and that also would cross the year.

Councilmember DeFilippis: With this ordinance are we affecting the contract we have with our current carrier?

Ms. Cipriani: No. This will not alter the contract with Waste Management.

Councilmember Barnes: What if we remove the section discussing the obscured from public view?

Ms. Cipriani: No, that would be a substantial change.

Mayor Curtis: If we table the ordinance what has to be done with the county?

Ms. Cipriani: They would be displeased. If the ordinance is tabled you could reintroduce it with only the recycling changes on January 4th and then discussed the section on placement at a later time.

Councilmember Barnes: I feel residents should be able to place their garbage in the front yard if it is screened.

Mayor Curtis: To make the county happy we could adopt tonight and then in January amend.

Councilmember Urner: Our existing ordinance is restrictive on placement.

Councilmember Barnes: Safety is an issue. People have reasons that they don't want someone in their yard - pools, children, pets, raccoons the ordinance is not workable for everyone in town.

Councilmember Green: Isn't there an option to locate in the side yard?

Councilmember Barnes: What if you don't have a side yard.

Councilmember Green: Could it read side yard obscured from view.

Councilmember Berko: The current ordinance limits cans to back yard only and that for collection they can be placed in the side.

Mayor Curtis opened the meeting to the public for a hearing on this ordinance.

Brian Magory, 1510 Bay Avenue: When I appeared before you many, many months ago, I addressed four points small children, pets, swimming pools and raccoons. Not everyone has a usable side yard or they don't want to leave their gates unlocked. Most of us have also taken the raccoon issue seriously by keeping the garbage in our garage. Mayor, I spoke with you and you told me we would get together but I am not aware that has occurred. I was not invited if it took place. My wife, after the meeting in the summer, received an e-mail from Councilmember Berko giving raccoon and bear proof straps and also a reference to the failure to enforce. I do understand you can crush me. I am willing to do what you want so who do I give the key to my gate to?

Mayor Curtis: The open session on the topic did not occur. I do apologize.

Councilmember Berko: Raccoons weren't my issue, people brought it up, I only gave you a solution. You are right there is a failure to communicate and enforcement. If we aren't going to enforce ordinances on the books we should get rid of them. The lack of enforcement has a number of residents putting their garbage out to the street.

Mr. Magory: A number of years ago there weren't so many swimming pools in town. Two years ago public safety required sidewalks on Bay Avenue. I do recognize that things change, there are more children now and not only in the summer. Please realize that consideration needs to be taken into account.

Councilmember Berko: The proposed ordinance adds side yards to make an alternative.

Ms. Cipriani: Clarification – the existing ordinance states for storage the garbage must be placed in the rear and for collection it may be placed in the side yard. The proposed ordinance states it may be placed in the rear or side for storage and collection. Neither allows front yard pick up or storage.

Councilmember Green: I would hop that the language be consistent. I would hate to forget the intent of the original ordinance not to have cans out all over town blowing all over the place. We pay to have garbage collected so that cans aren't out on the street. I realize the issue Brian and Jen have.

Ms. Cipriani: The proposed ordinance does create that consistency. It allows storage/collection in the side and rear yard. The front yard is a separate issue.

Councilmember Berko: It goes with the terms of our zoning as to front and side yard.

Councilmember Barnes: I am not opposed to storage of cans in the side or rear yard. This is a safety issue. Aesthetics or safety which is more important?

Mr. Magory: I have live 10 years in my house and my garbage has never been out by the street. It is shielded by cars and the cans are brought back in after pick up.

Councilmember DeFilippis: When writing an ordinance if you allow it to be placed in the front you have to determine for what period of time. In my neighborhood some leave on Sunday and don't return until Thursday – what do they do?

Ms. Cipriani: There are a lot of opinions. You are discussing a new ordinance. The discussion should be limited to proposed Ordinance 2009-11 at this time.

Stan Niedzwiecki, 42 Johnson Street: If you table the ordinance – you will have to spend another \$350.00 to publish. The people who really need to hear this is the vacationers. Lake Avenue is full of bags placed out on Sunday when everyone is leaving. As far as dogs, kids and pools – hang a key on the inside of the gate. It seems by tabling the ordinance you are only pushing it to the back burner – we aren't moving ahead. Who is to enforce or administer a summons for the past violations?

Ms. Cipriani: Code enforcement or the police.

Zoe Wells, 766 East Avenue: Stan said everything on my mind. Give out a couple of summons. Garbage out on the day of pick up is not the problem. I remember this conversation not so long ago. If we enforce and give out some tickets – they would know you mean it.

Mayor Curtis: If the renters are the problem the owner and the renter should receive a summons.

Councilmember Berko: We have done the same on the noise ordinance.

Councilmember Wells: They will read the notice given to them if they have to pay.

Paula Weissberger, 1296 Bay Avenue: I purchase my home eight years ago and have been a full time resident for the last four years. I understand that the garbage shouldn't be placed at the curb but my house sets so far back that even with the garbage in the front it is not visible from the street. What are we going for here, obstruction from view or placement at the curb? The ordinance doesn't address what the problem is.

Ms. Cipriani: It is important tonight that we are clear. This is not a change in this ordinance. It clarifies the back and side but it still doesn't allow it in the front yard. The bulk of the ordinance has to do with recycling rules which the county requires us to adopt. The front placement would require a new ordinance.

Vallerie Magory, 1510 Bay Avenue: I agree with the ordinance we have as to recycling. Now we have to store it in the back yard but may place it on the rear/side for pick up. I feel the ordinance should be redrafted.

The storage of garbage in the rear and side yard was discussed.

Ms. Cipriani: The old ordinance did not allow storage or pick up in the front yard. It stated garbage must be stored in the rear and may be in the rear or side for pick up. If you want to move the ordinance you could delete the last sentence in section 204.2 (a) "Receptacles are prohibited in any front yard area".

Councilmember Barnes: I don't see how the storage in the side yard helps anything.

Joanne Pehlivanian, 332 Western Avenue: Is it smart to pass this ordinance if you are going to change it again?

Ms. Cipriani: The bulk of the ordinance has to do with recycling.

Mayor Curtis: I would like to see, if at all possible to separate this out either tonight or on January 4th.

Council discussed the deletion of the last sentence as recommended by Ms. Cipriani.

Mayor Curtis closed the public hearing on Ordinance 2009-11.

Councilmember Glass moved the ordinance minus the last sentence in section 204.2 (a) "Receptacles are prohibited in any front yard area" be adopted on second and final passage. The motion was seconded by Councilmember Berko.

Mayor Curtis: If we eliminate that one sentence is that status quo?

Ms. Cipriani: The proposed ordinance allows storage on the side as long as it is screened from view.

The motion to adopt passed on roll call vote. **YEAS:** Berko, Green, Glass, DeFilippis, Urner. **NAYS:** Barnes. A copy of the ordinance is attached to these minutes.

Mayor Curtis: I would like to form a seven person committee to review the front yard issue. I would like to appoint Councilmember Berko, Councilmember Barnes, Paula Weissberger and either Brian or Vallerie Magory (you can decide yourselves) at this time.

Mayor Curtis called for Unfinished Business.

Councilmember Berko: The swan has been saved. An article was published in the *Ocean Star*. I would like to thank everyone who was involved.

Mayor Curtis called for New Business and Resolutions.

Councilmember DeFilippis offered Resolution 2009-106 authorizing a change order in the amount of \$14,430.56 for a decrease in the contract executed with Earle Asphalt Company for roadwork done in the municipality and moved it be adopted. This motion was seconded by Councilmember Urner and passed on roll call vote. **YEAS:** Berko, Green, Barnes, Glass, DeFilippis, Urner. **NAYS:** None. A copy of the resolution is attached to these minutes.

Councilmember Urner offered Resolution 2009-107 authorizing transfer #3 in the 2009 Municipal Budget and moved it be adopted. This motion was seconded by Councilmember DeFilippis and passed on roll call vote. **YEAS:** Berko, Green, Barnes, Glass, DeFilippis, Urner. **NAYS:** None. A copy of the resolution is attached to these minutes.

Councilmember Glass offered Resolution 2009-108 awarding a contract to Hertrich Fleet Services Inc. for a 2010 Law Enforcement Vehicle and moved it be adopted. This motion was seconded by Councilmember DeFilippis and passed on roll call vote. **YEAS:** Berko, Green, Barnes, Glass, DeFilippis, Urner. **NAYS:** None. A copy of the resolution is attached to these minutes.

Councilmember DeFilippis offered Resolution 2009-109 memorializing motion approving design of parking on Lake Avenue and moved it be adopted. This motion was seconded by Councilmember Glass.

Councilmember Barnes: I was absent on December 7th, should I vote on the resolution?

Ms. Cipriani: No. The motion was official action. The resolution sets forth issues of design immunity and concerns with liability.

Councilmember Barnes: Is this the final determination?

Councilmember DeFilippis: As far as parking is concerned.

Councilmember Green: Can a vote be changed?

Ms. Cipriani: The motion was adopted. A motion can be offered to rescind that motion.

Council discussed with Ms. Cipriani rescinding the motion and tabling the resolution.

Councilmember Green moved to table Resolution 2009-109. The motion was seconded by Councilmember Berko and passed on roll call vote. YEAS: Berko, Green, Barnes, Glass. NAYS: DeFilippis, Urner.

Councilmember Green moved to rescind the motion of December 7th approving the stripping of Lake Avenue. Councilmember Berko seconded the motion which was denied on roll call vote. YEAS: Berko, Green, Barnes. NAYS: Glass, DeFilippis, Urner, Curtis.

Ms. Cipriani: The motion of December 7th approving the stripping of Lake Avenue stands.

Councilmember Berko moved Resolution 2009-106. This motion was seconded by Councilmember Glass and passed on roll call vote. YEAS: Berko, Barnes, Glass, DeFilippis. NAYS: Green, Urner. A copy of the resolution is attached to these minutes.

Mayor Curtis opened the meeting for Public Discussion.

Mr. Niedzwiecki: Councilmember Glass, what is the situation with the Ford Explorer parked up at public works?

Councilmember DeFilippis: It doesn't run, it will be sold for scrap.

Mr. Niedzwiecki: Why don't you following other towns by have work session? Tonight there was a lot of discussion which was a waste of time. It is clear that you aren't talking to one another. When you go into executive session why can't we participate?

Mayor Curtis: We are limited to specific topics that we can go into executive session on. We should have work sessions.

Ms. Cipriani: Work session has to be advertised and a portion has to be open for public comment.

Mr. Niedzwiecki: I agree with Councilmember Berko, someone is going to get hit on Lake Avenue. I would suggest utilities being moved back three feet. The Planning Board has to insist lines be buried underground.

There being no further comments Councilmember Urner moved to approve the vouchers for payment, which motion was seconded by Councilmember Berko and passed on roll call vote. YEAS: Berko,

Green, Barnes, Glass, DeFilippis, Urner. NAYS: None. A list of the vouchers is attached to these minutes.

Mayor Curtis wished everyone a Merry Christmas and Happy New Year.

The meeting was adjourned.

**Patricia M. Applegate, RMC
Municipal Clerk**

William W. Curtis, Mayor