

September 7, 2010

The regular meeting of Mayor and Council of the Borough of Bay Head was held on September 7, 2010 at 7:00 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 him in the Pledge of Allegiance to the Flag.

The roll was called for attendance. Present were Mayor Curtis and Councilmembers Berko, Green, Barnes, Glass, DeFilippis, Urner and Michael Gilmore, Esq. covering for Ms. Cipriani, Borough Attorney.

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 Barnes moved to approve the minutes of August 16, 2010. The motion was seconded by Councilmember Glass and passed on roll call vote: YEAS: Berko, Green, Barnes, Glass, DeFilippis, Urner. NAYS: None.

Mayor Curtis made the following appointment:

**Fredrick H. Applegate, Alternate No. 4 to the Bay Head Planning Board
Kyle M. Coleman, Membership to the Bay Head Fire Company No. 1**

Mayor Curtis called for Reports of Standing Committees.

Councilmember Berko, Legal and Planning, had no report.

Councilmember Green, Parks, Grounds and Recreation: The Summer Recreation Program was an outstanding success. Attendance averaged around 50 children per day. I have received many positive responses from parents. The addition of the fitness program was great, and I would like to thank the Mayor and Council for that addition. It was a great experiment in seeing we can expand what is already a successful program to meet the needs of the community. I look forward moving ahead and addressing other possible additions to the program over the course of the year.

Councilmember Barnes, Public Services, read the Zoning Officer report and the Construction Official report for the month of August. A copy of the report is attached to these minutes. The Telecommunications Committee, after a nine month review, has selected a new telephone vendor. I am proud to say the Borough be saving several hundred

dollars a year. We are getting all brand new phone equipment and better service at a much lower cost.

Councilmember Glass, Public Safety, read the Police Activity report for the month of August. A copy of the report is attached to these minutes. I would also like to thank the Police for all their work in the busy month of August. As a follow up to the last meeting, the barrel stating Do Not Enter, has been removed from the intersection of West Lake and Park Avenue. Police also monitored the speed of trucks on Main Avenue with one being given a warning of going 38 mph. Chief Grace and the Police will continue to monitor the speed.

Chief Grace: Bay Head Police Department will be participating in Operation Take Back, sponsored by DEA, which allows residents to bring in their unused, unwanted or expired prescriptions to our Police Headquarters on Saturday, September 25th between 10 am and 2 pm so that they can be disposed of properly.

Councilmember Green: I will be sure the Environmental Commission does an e-mail blast. I would like to echo Mary's thanks to the Police Department. Thanks so much for working so hard through the really busy month of August; we are fortunate for the department and your leadership.

Mayor Curtis: I would like to compliment the six of you for fighting hard to get the four way stop sign at Lake and Mount Street. I have heard nothing but fine compliments, thanking us that we put them up and that it works. That corner was talked about for years. Now, we will see how it works for the fall, winter and spring.

Councilmember DeFilippis, Public Works, had no report.

Councilmember Urner, Finance: My preliminary look at our budget for this year says we are in very good shape. The Finance Committee is going to start it's work on the 2011 budget early because of all the new regulations which have been put out by the State. We want to get a jump start on the capitol projects that need to be taken care of early in the year.

Mayor Curtis called for Clerk's Correspondence.

Mrs. Applegate offered a request from Jersey Shore Relay to Benefit Special Olympics for participants to run through Bay Head on Saturday, April 16, 2010. Councilmember Urner moved to approve the request. The motion was seconded by Councilmember Green and passed on roll call vote. YEAS: Berko, Green, Barnes, Glass, DeFilippis, Urner. NAYS: None.

Mayor Curtis introduced Michael Gilmore, Esq. and welcomed him.

Mayor Curtis called for Unfinished Business. There was none.

Mayor Curtis called for New Business and Resolutions.

Councilmember Berko: I noticed that the garbage cans on the beach were overflowing this morning. What is the procedure now that the beach is closed?

Mayor Curtis: I think BHIA is responsible for this weekend.

Councilmember Berko: I would like the bike racks left through November.

Councilmember DeFilippis: Yes.

Councilmember Berko: Have the signs been switched on the beach concerning dogs?

Mrs. Applegate: Yes, today.

Councilmember Berko offered Resolution 2010-94 approving the renewal of license to sell alcoholic beverage to Janice Lyn Stephens, LLC T/A Bay Head Wine & Spirits and moved it be adopted. This motion was seconded by Councilmember Glass 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 Berko offered Resolution 2010-95 renewing membership with Ocean County Municipal Joint Insurance Fund and moved it be adopted. This motion was seconded by Councilmember Barnes 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 2010-96 authorizing refunds for overpayments of property or sewer taxes and moved it be adopted. This motion was seconded by Councilmember Glass 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.

Mayor Curtis opened the meeting for Public Discussion.

Stan Niedzwiecki, 42 Johnson Street: Concerning the ABC license renewal, what fee does the town get out of it?

Mrs. Applegate: \$1,032.00.

Mr. Niedzwiecki: Would it be to our advantage to increase the fee?

Mrs. Applegate: We are limited by statute as to the amount we can increase it.

Roberta Burcz, Esq. 203 Osborne Avenue and representing Theresa's South: We received correspondence from the Gilmore & Monahan firm dated August 18th stating that if we do not demonstrate compliance with an array of problems alegialely that you are going to file a

Complaint with the Superior Court of the State of New Jersey for injunctive relief to shut the restaurant down. This did catch us by surprise, we weren't aware the town was so dissatisfied with the operation that they would want to shut the restaurant down. I did respond and one of my questions was what meetings were this discussed at? I am also a taxpayer in town and I am curious, that you all have authorized litigation to shut this restaurant down. I would like to review those meeting minutes because if you are authorizing money to shut the restaurant down I think I have the right to know that. I did put that in my letter and I am waiting for a response. Mr. O'Connor is here, he is one of the owners and a full time resident of Bay Head. I don't know if my response is enough to call you guys off – all I did was write a letter, I don't know if that is a demonstration of compliance. One of the problems claimed is that they pick up the garbage at the wrong time. I read the resolution and it says it has to be the last pickup of the day. I walking around town I see that the garbage truck is around town at 6:45 am. I saw it on Main Avenue one day and on Bridge. My clients have employed the same contractor. The deal is they come by on Mount pick up the garbage for the residences – somehow it makes more noise to pick up the restaurants garage than the residents? They have to go pick up all the garbage for the rest of the town and then come back and pick up the restaurant garbage. Somehow this is supposed to be better from an environmental point of view, a noise point of view and a nuisance point of view. We have gone with that program if that is what the town wants, unfortunately employees go on vacation. I think this condition needs to be reviewed. This is one of the very few businesses that are new and thriving in town. I am not certain what message is trying to be sent by this. I am curious, was this discussed at a public meeting to shut this restaurant down? The question is who gives the authority to hire the town attorney to engage in litigation, that is the question, and I would think the taxpayers of Bay Head would want to know.

Mayor Curtis: We will get that answer for you.

Ms. Burcz: I did put it in writing. On August 25 I mailed it certified mail to your attorney and fifteen copies of the letter were also delivered to your office. I made application on August 23rd to the Planning Board to hopefully amend the resolution and resolve some of these issues.

Mayor Curtis: I just want to address the garbage issue. Both the Chief and I have talked to Waste Management about the early arrival of the truck. Marpal also arrived early to the town. We have received other complaints of the early arrival with the back up beep noise. I spoke to Rich, the route manager, specifically about Mount Street and his directive to the driver was that you pick up Mount Street all at one time. I told him not to do it so early in the morning to make it a later stop in the day. You are correct, someone was on vacation and the substitute driver came early. The garbage issue is something we are taking up with Waste Management. I don't think the owner of the establishment had any control over the garbage.

Evalyn Shippee, 56 Bridge Avenue: I would like to go back to the meeting of August 16th. I would like to thank the attorney and Council for recognizing an immediate problem and acting upon allowing the CO to be issued. I also want to publicly apologize to Mary Glass. I was shocked to read in the newspaper what appeared to be my singling her out as a shrub violator. I stated you all were shrub violators. I too made an error, we are talking about Ordinance 147-6 4f, that deals with hedges, shrubbery, fences, trees, bushes, flowers, walls, anything at all that is between the street and your setback line. Your setback line in the front is generally twenty feet. If you are on a corner it is twenty and ten. Anybody in town who has any of those items within that stretch is a violator. I need some clarification. I asked Bart how many people in town are violating this ordinance. How many people are currently getting a summons in 2010. How many have gotten a summons for this ordinance in the past five years. He provided me with a written response basically saying that there are so many people in violation of this ordinance that it was too numerous to list. He did provide me with eight names who received notice in 2010. Over the past five years he mentioned eleven others. I would ask you, what was the criteria for judging the eight properties? Does anybody know?

Councilmember Barnes: In addition to Ordinance 147-6f which only addresses hedges, fences or walls exceeding height or width – did you look at section 83.1?

Ms. Shippee: Yes, I did.

Councilmember Barnes read the following:
83-1. Duties of owners and tenants.

Where the Mayor and Council shall deem it necessary and expedient for the preservation of the public safety, the owner or tenant of any lands lying within the borough shall cut and keep cut to a height of not more than two and one-half (2½) feet all brush, hedges and other plant life growing within twenty-five (25) feet of the intersection of any tow (2) roadways or within ten (10) feet of any roadway, within ten (10) days after notice to cut the same.

The properties that have been noticed with warnings, for the most part if not all, are corner properties. The issue that we have is that a public safety issue has been raised because when a driver or a pedestrian or someone on a bicycle is driving down the street and they can not see the line of sight of on coming traffic that is where it becomes a problem for us. If it is a line of sight which we believe Section 83.1 in conjunction with 147.6, those two together make in imperative upon us to act. Those are the two ordinances we are relying on at this point.

Ms. Shippee: As I understand Section 83 – twenty-five feet from the curb.

Councilmember Barnes: Twenty-five feet from the intersection.

Ms. Shippee: At 252 Park Avenue the first tree is over twenty-five feet.

Bob Shippee, owner of 252 Park Avenue: We seem to have two ordinances that are in conflict with each other at some level. My property clearly conforms to the site triangle ordinance. We are more that twenty-five feet back from each corner. The original row was planted to close to the sidewalk so I had them moved back to be even with everything else along Bay Avenue. I wasn't sited for the site triangle but for 147.6. In reading that, it really gets to the heart of what Council needs to decide and deal with. I don't agree with you that the two ordinances go together – they are separate.

Mayor Curtis: Since the August 16th meeting we have looked at this and discussed it with our attorney. The committee will be analyzing those ordinances very carefully; very quickly so that we make sure they don't conflict with one another. If that is your desire or your request, it is being done.

Ms. Shippee: The penalties for these violations are fines up to \$1,000 and up to 90 days in jail.

Councilmember Berko: Those are standard.

Ms. Shippee: Are our officials mandated to act on a complaint from anyone?

Councilmember Berko: They are mandated to investigate complaints.

Ms. Shippee: Is there anyway to say that anonymous complaints aren't to be acted on?

Councilmember Berko: That creates problems because we have been asking for help from residents because we have limited resources and can't always find out the situations. We don't want to inhibit someone inclination to make a complaint.

Ms. Shippee: I would like to know who complained against trees.

Councilmember Barnes: Several people came to me stating they were concerned when driving on Park Avenue and attempt to make a left onto Bay Avenue. They stated they had to be all the way into the intersection to safely see south bound traffic on Bay. I spoke with Bart and he investigated it. That is pretty much how this whole thing started.

Councilmember Berko: Take the personal issue out of it. The bush on the corner of Bay and Osborne is clearly in violation of the site line ordinance. That is not a complaint about a tree it is a complaint about a safety problem.

Ms. Shippee: At 252 Park Avenue the site triangle is free and clear.

Mayor Curtis: There is nothing personal about why these eight people were given a warning. If they have been complained about we will look at it. Bob has asked us to do something and we are already doing it. I

think you will find, at the end of the day, we will have a very firm ordinance that will be easily discernible whether it is right or wrong.

Mary Knapp, 1290 Bay Avenue: I am not refusing to cut my bush. I want equality, equality, equality. I receive multiple notices. I drove around town and there are certainly other intersections that I am scared to go around. I am very big on credibility and equality. I don't think there is equality going on in this town. Thank you.

Councilmember Berko: I agree with you in a sense. I have been gripping about the lack of enforcement concerning the garbage ordinance, the dune ordinance, the site ordinance, bushes growing over the sidewalk – the problem is we have to start somewhere. There is no intent to single anyone out.

There being no further comments Councilmember Urner moved to approve the vouchers for payment, which motion was seconded by Councilmember Glass 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.

The meeting was adjourned.

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

William W. Curtis, Mayor