

**REGULAR MEETING
OF CITY COUNCIL OF THE CITY OF CAPE MAY, NJ
Monday, November 15, 2010 – 7 P.M.**

The regular meeting of City Council of the City of Cape May was called to order by Mayor Mahaney 7:00pm Monday, November 15, 2010, in the Cape May City Hall Auditorium. The Clerk called the roll and the Pledge of Allegiance was recited.

Present: Councilmember Deanna Fiocca
Mayor Edward J. Mahaney, Jr.
Councilmember William H. Murray
Councilmember Terri L. Swain
Deputy Mayor Jack Wichterman
City Attorney Andrew Catanese
City Manager Bruce MacLeod
City Clerk Diane Weldon
Deputy Clerk Louise Cummiskey

Mayor Mahaney announced that under the Open Public Meetings Law, notice of this meeting was sent to the Cape May Star and Wave and The Press and a copy of the agenda was delivered to each Member of Council and was posted on the City Hall Bulletin Board.

Minutes do not reflect the actual order in which the events occurred.

Washington Street Mall Management Co., Inc. presentation of 2011 Budget

Treasurer, Deirdre HineLine and Chairman Steve Smarro approach the table. Mayor Mahaney advises that the proposed budget of the BID is set forth on the back of Resolution 235-11-2010 and that per Ordinance, the BID must come before Council in November to make a presentation of the budget which for the FY 2011, amounts to \$70,200.00. A public hearing will be held on this budget on December 7, 2010, at which time the budget will be approved. The Mayor asks if the representatives of the BID would like to discuss anything and Ms. HineLine advises that the surplus amount being carried over this year is less than last year and she anticipates that surplus dwindling over the coming years. Mayor Mahaney asks if the BID is anticipating sponsoring the Shuttle again this year and Mr. Smarro advises that the BID members are still considering it. There is much discussion about the route and the schedule of the Shuttle as no one seems to know when and where it runs. Mr. MacLeod advises as to the schedule of the Shuttle and hopes that the BID will continue to support the Shuttle and thinks that concerns can be addressed and resolved. Transportation for City employees was also discussed and Mayor Mahaney suggests a meeting with Mr. Adelizzi to work out the details. Councilmember Murray expounds on the benefits of the Shuttle and hopes that the problems can be ironed out.

235-11-2010 Resolution introducing and approving the 2011 budget of the Washington Street Mall Business Improvement District of the City of Cape May

Motion: Murray

Second: Fiocca

Roll Call:

Fiocca	Yes
Murray	Yes
Swain	Yes
Wichterman	Yes
Mahaney	Yes

Mayor Mahaney asks the Clerk to schedule the budget hearing for the BID at 2:00 P.M. on December 7, 2010

AGENDA ADDITION/DELETION OF LATE AGENDA ITEMS TO BE CONSIDERED FOR ACTION:

Addition of Resolution 241-11-2010 and removal of Resolution 240-11-2010 and 241-11-2010 from the Consent part of the Resolution Agenda

241-11-2010 Resolution authorizing the City of Cape May to enter into a state aid agreement with the New Jersey Department of Environmental Protection for construction of Lower Cape May Meadows-Cape May Point, New Jersey Ecosystem Restoration Project, Project No. 6056-R2

Motion: Wichterman

Second: Swain

Roll Call:

Fiocca	Yes
Murray	Yes
Swain	Yes
Wichterman	Yes
Mahaney	Yes

ORDINANCE FOR INTRODUCTION:

220-2010 Ordinance amending the Cape May City Administrative Code changing the date of municipal elections from the second Tuesday in May to the Day of General Election, the Tuesday after the first Monday in November

Motion: Wichterman

Second: Fiocca

Roll Call:

Fiocca	Yes
Murray	Yes
Swain	Yes
Wichterman	Yes
Mahaney	Yes

221-2010 An Ordinance amending Sections 92-3C and 92-6 of the Cape May City Code

City Clerk Diane Weldon advises that this Ordinance is regarding photocopying fees and further advises that there is a typographical error on the Ordinance. C.(1)(b) of the Ordinance should read 8-1/2 x 14 (or larger) copies are \$0.07 per page. C.(1)(c) should be removed completely.

Motion: Murray

Second: Swain

Roll Call:

Fiocca Yes

Murray Yes

Swain Yes

Wichterman Yes

Mahaney Yes

222-2010 An Ordinance amending Chapter 7, Section 7-37.1, and adding a new Section 7-44.4 of the Cape May City Code

Motion: Wichterman

Second: Swain

Roll Call:

Fiocca Yes

Murray Yes

Swain Yes

Wichterman Yes

Mahaney Yes

ORDINANCE FOR SECOND READING AND CONSIDERATION FOR ADOPTION:

217-2010 Ordinance of the City of Cape May approving amended and restated lease agreement between the City of Cape May and Cape May Tennis Club Inc.

Mayor asks for motion to adopt Ordinance 217-2010.

Motion: Wichterman

Second: Swain

Mayor Mahaney opens the meeting for a public hearing.

Hearing no public comment, Mayor Mahaney closes the public hearing and asks for a roll call vote.

Prior to the vote, Mr. MacLeod speaks about the term which will commence on January 1, 2011 for the new twenty-five year period.

Roll Call:

Fiocca Yes

Murray Yes

Swain Yes
Wichterman Yes
Mahaney Yes

218-2010 Ordinance amending section 145-8 (C) and section 158-9 (A)(4) of the Cape May City Code (dogs on the promenade)

Mayor Mahaney opens the meeting for a public hearing.

Hearing no public comment, Mayor Mahaney closes the public hearing and asks for a roll call vote.

Mayor asks for motion to adopt Ordinance 218-2010.

Motion: Fiocca

Second: Murray

Roll Call:

Fiocca Yes
Murray Yes
Swain Yes
Wichterman Yes
Mahaney Yes

219-2010 Ordinance amending section 7-13 of the Cape May City Administrative Code (parking on Lafayette St)

Mayor asks for motion to adopt Ordinance 219-2010.

Motion: Wichterman

Second: Swain

Mayor Mahaney opens the meeting for a public hearing.

Hearing no public comment, Mayor Mahaney closes the public hearing and asks for a roll call vote.

Roll Call:

Fiocca Yes
Murray Yes
Swain Yes
Wichterman Yes
Mahaney Yes

RESOLUTIONS: Council will accept questions from the public on resolutions:

236-11-2010 Resolution authorizing a reduction of performance guarantee for Carol Emmens minor subdivision project

- 237-11-2010 Resolution authorizing the release of performance guarantee for Robert H. Gilbert and Denis Flynn
- 238-11-2010 Payment of bills
- 239-11-2010 Resolution supporting participation in the Sustainable Jersey Municipal Certification Program

Motion: Wichterman

Second: Fiocca

Roll Call:

Fiocca	Yes
Murray	Yes
Swain	Yes
Wichterman	Yes
Mahaney	Yes

- 240-11-2010 Resolution appointing Municipal Engineer and approving professional services agreement

Motion: Wichterman

Second: Murray

John Fleming, 1484 Washington Street, Cape May, NJ, asks if this Resolution will appoint a new City Engineer and he asks the name of the Engineer and the term of the Contract. Deputy Mayor Wichterman advises the new Engineer will be Remington Vernick & Wahlberg and the term will be for one year. Mr. Fleming then advises that he has done some research as to the City hiring a full time Engineer and he has learned that Upper Township does have a full time Engineer. He believes that the City of Cape May should give serious consideration to moving in that direction. Mr. Fleming then asks if we were in a litigation with Remington Vernick and Deputy Mayor Wichterman responds that we were but that the litigation was dropped by both sides. Mr. Fleming then asks about the litigation and the terms of the settlement and then states that he believes it is odd that we would enter into a contract with someone who we sued so recently. Mr. Fleming asks why Remington Vernick & Wahlberg were selected over the other firms under consideration for the job.

Deputy Mayor Wichterman advises that he has spent forty years working with engineering firms in the public sector and he had worked with Remington Vernick for two years when he was previously on City Council. Mr. Wichterman states that he reviewed all of the RFPs that were submitted and in his opinion, Remington Vernick was the most qualified and also, one of the representatives of Remington Vernick & Wahlberg lives in the City of Cape May. Deputy Mayor Wichterman advises that he knows Remington Vernick & Wahlberg to be a very capable engineering firm. Councilmember Fiocca states that when the four engineering firms were interviewed, the public was welcome to attend and no one attended. Ms. Fiocca feels that the public knew who was on the agenda and they could have attended to give their opinion. Mr. Fleming then asks if the fees quoted by Remington Vernick & Wahlberg in their proposal were less than other candidates. Deputy Mayor Wichterman advises they were not and further advises that Mr. Fleming can visit City Hall and review the proposals.

Prior to her vote, Councilmember Fiocca advises that “just for the record I’d like it known that for four and a half years I worked with Remington Vernick on the Lower Township Zoning Board, we never had a problem and I was very impressed with their work, so I am going to vote yes.”

Prior to her vote, Councilmember Swain advises that “based upon attending council meetings over the last two and a half years, as well as sitting in on meetings during the transition period with the past two administrations, in addition to completing the Rutgers newly elected officials program, I feel that the taxpayers of Cape May would be better serviced by another one of the engineering firms so therefore, my vote is no.”

Prior to his vote, Mayor Mahaney reads a statement as follows:

Following comprehensive examination, analysis, and consideration of the prior relationships between the City of Cape May and Remington, Vernick & Walberg Engineers, Inc. (RV&W) during the past 15 years, I must vote “NO” tonight on Resolution #240-11-2010 (Resolution appointing Municipal Engineer and approving professional services agreement).

My decision is based on the factual documentation gathered and recorded by the City of Cape May both prior to and subsequent to my being elected as Mayor of the City of Cape May and taking the oath of office on July 1, 2008. Following my election as Mayor in May 2008, the then existing City Council (including the outgoing Mayor and outgoing City Councilman) unanimously agreed in Executive Session to refer specific documented practices engaged in by the then-serving City Engineer who was an employee of RV&W to the County Prosecutor for further investigation. Relatedly, that same City Council complained repeatedly in Executive Session regarding the poor performance of RV&W on City-authorized projects. These same complaints continued from the three remaining members of City Council after Councilmember Terri Swain and I took office on July 1, 2008. Despite earnest efforts by the City Council, new City Manager, and City Attorney to discuss and resolve the particular issues and problems with authorized representatives of RV&W during the succeeding months, the City Council was compelled to end the relationship with RV&W near the end of 2008 because there was no improvement in performance by RV&W. It should be noted that one of the principals of RV&W, who met with City representatives on multiple occasions, admitted shortcomings in performance by RV&W and promised to resolve the deficiencies and even to withdraw from providing engineering services for the City, but never did.

Despite the fact that the Washington Street Mall renovations and the Beach Patrol Headquarters improvements were completed projects when I assumed office on July 1, 2008, the City is still burdened with significant punch list problems with the Mall contract and just recently settled punch list issues with the contractor on the Beach Patrol Headquarters project. This is all as a result of RV&W’s poor performance. Additionally, the City is still facing claims by the contractor on the USDA-funded Inflow and Infiltration contract for Michigan and Indiana Avenues. This particular project was also coming to conclusion in the Summer of 2008, but RV&W has left the City with an approximately \$500,000 claim for change orders by the contractor.

As a result, in December 2008, the City had to initiate a lawsuit against RV&W in Superior Court to end the engineering relationship and to move on with no financial penalty to either party. RV&W refused to accept the City's proposed relief, and, in fact, countersued the City with the hope of obtaining significant financial gain. The legal process in this matter was dragged on by RV&W for 18 months at considerable cost to the City. Then, miraculously, just after the Municipal Election in May 2010 for the direct election of three new Councilmembers, attorneys representing RV&W proposed to Superior Court that the City's lawsuit and RV&W's countersuit be settled by ending the engineering relationship with no financial penalty to either party. Thus, without any provocation from the City, RV&W had suddenly agreed to the very settlement relief that the City had proposed 18 months earlier. However, RV&W's settlement proposal included a "gag order" that would prohibit any current or former City Councilmember, City employee, and City appointee from making any negative comment about RV&W and its performance as City Engineer. The Councilmembers and I refused to settle this legal matter until the "gag order" was removed from the agreement. It should also be noted that the contract with the replacement City Engineer was due to expire within a month on June 30, 2010. The replacement City Engineer was chosen in an open and transparent process involving an advertised Request for Proposals, a review of all submitted proposals by all five serving Councilmembers, an interview of finalists in a public forum with a public Council vote at the end of the day of interviews. All elements of the selection process and contractual contents were in conformance with the State of New Jersey's Public Contracts Law.

During my years in public service in Cape May, I have earned the respect of the citizenry for my commitment to making decisions that are in the best interests of the City and its residents, businesses, and visitors. Therefore, I will not compromise my honesty, integrity, and character and also betray the best interests of our City and its taxpayers by voting to adopt Resolution #240-11-2010 which would return RV&W to the role of City Engineer. Any of the other three firms, which were finalists for this appointment, possess the requisite professional qualifications and history of professional conduct to serve the engineering needs of the City of Cape May in an exemplary manner with mutual respect and dignity. So I vote no.

Dr. Edward J. Mahaney, Jr.
Mayor
City of Cape May
November 15, 2010

Roll Call:

Fiocca	Yes
Murray	Yes
Swain	No
Wichterman	Yes
Mahaney	No

Councilmember Murray has two quick comments about the Mayor's statement. He hopes that there is no adverse inference about the fact that the three councilmembers had anything to do with Remington Vernick & Wahlberg dropping their lawsuit. He wants to make that very clear for the record, at least from his perspective. His second comment is he wants no adverse inference drawn

by the fact that the Mayor stated that the prior engineer was selected as a result of open public consideration. That is the same way that the present engineer was also selected.

241-11-2010 Resolution authorizing the City of Cape May to enter into a state aid agreement with the New Jersey Department of Environmental Protection for construction of Lower Cape May Meadows-Cape May Point, New Jersey Ecosystem Restoration Project, Project No. 6056-R2

Mayor Mahaney offers background information regarding Resolution 241 and asks City Manager MacLeod to further update council regarding the aforementioned Resolution.

Mr. MacLeod advises that the State removed language from the Agreement that the City of Cape May specifically wanted included. The State Aid Agreement was adopted by the City as put before them at the last meeting and since that time, the State has asked for some changes. The changes to the Agreement include the addition of two Whereas clauses on page two which are underscored and the restrictive language contained in item twenty-five on page seven has been removed. New language reciting the exact nature of the work to be performed by the state has been inserted and it is felt that by including this recitation, the State will be limited to the extent of what is set forth in the Agreement and no new dunes will be created which may be deemed as set aside space for the protection of vegetation and/or wild life. Mr. Murray questions Mr. MacLeod regarding the author of the new language and if same is acceptable by the State.

Deputy Mayor Wichterman is concerned that the State insists on removing from the Agreement the language that would allow the Cove Beach to always remain open as a bathing beach. It is a popular beach for families to visit and Mr. Wichterman is concerned that if some wildlife decides to nest there, the State would have the option to close the beach. The City must contribute \$214,000.00 to replenish the beach with the possibility of having the beach closed by the State in the future, comments Mr. Wichterman. He will not support this Resolution. However, the Deputy Mayor is concerned that a no vote will affect the City for future beach replenishment but in his opinion, the City of Cape May is too important as a vacation destination for the State to deny further support in maintaining its beaches.

Mr. MacLeod informs that if a pair of piping plover land anywhere on any beach and form a nest, the U.S. Fish and Wildlife and the State Fish and Wildlife will set off an area around the nest to protect it. Mr. Wichterman comments that he is familiar with the actions of the Federal and State Government regarding endangered species. Mr. MacLeod further advises that there are twenty-five paragraphs in the Agreement and some of those paragraphs provide specific language regarding beaches remaining open.

Councilmember Fiocca asks that if the State knows it can protect endangered wildlife, why did it remove the language required by the City. Mr. MacLeod believes that the State feels that language already exists in the document that protects the City against the closing of a beach.

Councilmember Murray, for the benefit of the public, explains that the language which the City would like preserved in the document is called a "reserve right clause." He advises that the City

wants to reserve the right to maintain the Cove beach as a public bathing beach. Mr. Murray believes that the biggest asset within the City is our bathing beaches and it is the duty of council to maintain those beaches. Councilmember Murray believes if we remove the reserve rights clause, we may, in the future, lose our right to bathe on the Cove beach.

Mr. MacLeod responds that the City has been continuing to negotiate with the State to reach some sort of agreement. The State has awarded a contract for the project which project will begin on Wednesday, November 17th with a preconstruction meeting scheduled for Friday of this week. He advises that if we don't move forward tonight, chances are high that we will not participate in this replenishment project.

Councilmember Murray asks if the Borough of Cape May Point has accepted this agreement and Mr. MacLeod's response is yes. Mr. Murray comments that he hopes the City of Cape May can continue to negotiate with the State regarding the Agreement.

Motion: Mahaney

Second: Swain

Roll Call:

Fiocca	No
Murray	No
Swain	Yes
Wichterman	No
Mahaney	Yes

Mayor Mahaney explains his vote.

REPORTS RECEIVED BY THE CLERK:

Fire Department report dated October, 2010
Assessors Office monthly report dated November 8, 2010
Haskin Shellfish Research Laboratory report dated October 25, 2010
Overtime report dated October 2010
Plan Endorsement Committee meeting minutes dated September 9, 2010
\$500. and under check register
CMC Planning Board meeting minutes dated October 26, 2010
CMC Police Department monthly report dated October, 2010
Construction Permit Activity Report for October, 2010

Motion: Mahaney

Second: Wichterman

Roll Call:

Fiocca	Yes
Murray	Yes
Swain	Yes
Wichterman	Yes
Mahaney	Yes

MINUTES:

Worksession/Regular City Council meeting minutes dated November 3, 2010
Closed Executive Session meeting minutes dated November 3, 2010

Motion: Wichterman

Second: Swain

Roll Call:

Fiocca	Yes
Murray	Yes
Swain	Yes
Wichterman	Yes
Mahaney	Yes

UNFINISHED BUSINESS:

NEW BUSINESS:

A) City Attorney

B) City Manager – Mr. MacLeod speaks about a meeting with the MAC regarding the Candlelight Tours in December. The meeting was held to go over the schedule and the trolley route to make sure that everything is in place to ensure a good time. On December 1, 2010, seasonal beach tags will be offered for sale at a reduced price of \$15.00 plus \$.75 for shipping and handling if done by mail. At the City Council Meeting on December 21, 2010, the students who created the winning designs for beach tags will be invited to attend the meeting and receive their award. Finally, this week is the League of Municipalities week.

C) City Clerk – The next Council Meeting will be held on December 7, 2010 and will begin at 12:00 P.M.

D) Councilmembers

Deputy Mayor Wichterman advises that Mac has their tree lighting ceremony on November 20, 2010 at 7:00 P.M.

Councilmember Fiocca advises that there is a broken bench at Grant Avenue and the Beach.

Mayor Mahaney wishes everyone a Happy Thanksgiving and mentions that the Jazz Festival, which was held this past weekend, was well attended and there was a lot of good feedback.

PUBLIC PORTION: Those wishing to publicly comment shall come forward, give their name and address and speak into the microphone. Each speaker will be limited to five (5) minutes.

John Fleming, 1484 Washington Street, Cape May, NJ comments about the trolley system and he is pleased to hear that there will be some movement on that. Mr. Fleming believes it is a vital part of the northern part of Cape May City and mariners who come into our harbor are looking for a way to get to the Acme, the Laundromat, Restaurants, etc. and have money to spend to get to those places.

COUNCIL & CITY MANAGER COMMENTS

Motion made by Deputy Mayor Wichterman, seconded by Councilmember Swain to adjourn. Meeting adjourned at approximately 8:45 P.M.

Edward J. Mahaney, Jr., Mayor

Jack Wichterman, Deputy Mayor

Deanna Fiocca, Councilmember

Terri L. Swain, Councilmember

William H. Murray, Councilmember

Diane L. Weldon, City Clerk