

**REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF CAPE MAY, NJ
Tuesday, February 19, 2013, 7:00 P.M.**

The worksession/regular meeting of City Council of the City of Cape May was called to order by Mayor Mahaney at 7:00 P.M. Tuesday, February 19, 2013 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 Terri L. Swain
Councilmember Jack Wichterman

Also Present: City Attorney Anthony Monzo
City Manager Bruce MacLeod
City Clerk Louise Cummiskey
Leon Costello. City Auditor

Absent: Deputy Mayor William H. Murray

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.

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

DISCUSSION ITEM

CMCMUA – Charles M. Norkis, P.E.

Mayor Mahaney introduced Mr. Charles Norkis, Executive Director of the CMCMUA. Mr. Norkis discusses wastewater treatment and how the rates are determined.

Mr. Norkis provides Mayor and Council with a User Charge System Rate Setting Report and explains the process that the County uses to determine their charges. Mr. Norkis advises that a large portion of the cost is for debt service (mortgage, insurance and labor costs) and he also reports that guests and visitors to Cape May County pay toward those costs. The City of Cape May is within range of the other communities advises Mr. Norkis, with a total cost of over \$2.5 million a year. Finally, Mr. Norkis advises that each Municipality has a service agreement with the CMCMUA which states that an audit must be performed at the end of each year and if there are monies left over, they will be added to the final audit.

Councilmember Wichterman inquires as to the cost of salaries within the County MUA organization. Mr. Wichterman would like to know the number of white collar employees and if they receive raises each year.

Mr. Norkis advises there are forty-four employees and they did not receive a raise this year. Also, Mr. Norkis comments that in the past ten years, four positions have been taken through attrition.

Councilmember Wichterman inquires as to the Commissioners' salaries and would like to know the number of meetings they attend on a yearly basis.

Mr. Norkis advises that the Commissioners earn \$7,500.00 per year, plus health insurance, depending upon when the Commissioner took office. The Commissioners attend two meetings a month.

Mayor Mahaney comments that in the past fifteen years, the City's usage with the MUA has lowered and as a result, the City will receive a credit at the end of the year. Also, the Mayor advises that due to flows from storm water, the City will receive reimbursement from FEMA. The Mayor comments that the investments by the taxpayers have proven to be successful.

Finally, Mr. Norkis advises that single stream recycling will begin April 1, 2013 in the City of Cape May and that the county will supply informational materials for the residents to help with the transition.

2013 CAPE MAY CITY BUDGET:

Leon Costello, City Auditor, advises that the 2013 Budget will be introduced at tonight's meeting. This is the official start of the City's Budget process with the State, comments Mr. Costello. Further, Mr. Costello advises that this budget requires three Councilmembers to agree to move forward and a Public Hearing which will be held on March 19, 2013. On March 19, 2013, Mr. Costello explains that a vote to adopt the budget or to make any changes will take place. Mr. Costello states that this budget was presented by the City Manager at a special meeting on January 23, 2013 and the budget does contain a 1.5% tax increase.

Councilmember Wichterman asks Mr. Costello to explain Ordinance 262-2013, an Ordinance to Exceed the Municipal Budget Appropriations Limits and to establish a CAP BANK.

Mr. Costello explains that the CAP increase and the CAP BANK is a formality and that the City is not expending anywhere near the CAP, and in fact, the City is \$518,000.00 below the spending CAP. The Ordinance allows the City to bank money and have the ability to spend more money in future years, reports Mr. Costello.

2013 CAPE MAY CITY BUDGET:

56-02-2013 Resolution Approving Introduction of 2013 City of Cape May Local Municipal Budget

Motion: Wichterman
Second: Swain

Roll Call:

Fiocca Yes
Swain Yes
Murray Absent
Wichterman Yes
Mahaney Yes

PROCLAMATION

Read Across America

ORDINANCES FOR INTRODUCTION:

261-2013 Ordinance of the City of Cape May Amending Chapter 194 of the Cape May City Code Regulating Outside Construction Activities

Motion: Wichterman

Second: Swain

Roll Call:

Fiocca Yes
Swain Yes
Murray Absent
Wichterman Yes
Mahaney Yes

262-2013 Ordinance to exceed the Municipal Budget Appropriations Limits and to establish a CAP BANK

Motion: Mahaney

Second: Wichterman

Roll Call:

Fiocca Yes
Swain Yes
Murray Absent
Wichterman Yes
Mahaney Yes

263-2013 Bond Ordinance Providing for the Acquisition and Improvement of Property for Open Space Active and Passive Recreation in and by the City of Cape May in the County of Cape May, New Jersey, Appropriating \$3,400,000 Therefor and Authorizing the Issuance of \$3,400,000 Bonds or Notes of the City to Finance the Cost Thereof

Motion: Wichterman

Second: Swain

Roll Call:

Fiocca Yes
Swain Yes

Murray Absent
Wichterman Yes
Mahaney Yes

Mayor Mahaney asks Mr. MacLeod to explain the process between the City and the HPC and Planning Board to update the 833 Historic Structures in the City of Cape May in order to maintain the National Historic Landmark status, before the introduction of Ordinance 264-2013.

Mr. MacLeod explains that two sets of surveys have been completed to date, with 349 in the first group and 527 in the second group. Of the 527, Mr. MacLeod reports that 244 properties had no change in designation. The remaining 283 properties have realized a change and Mr. MacLeod advises that all property owners will receive a notice by certified and regular mail, prior to the second reading of the Ordinance.

264-2013 Ordinance of the City of Cape May Updating List of Historic Structures

Motion: Wichterman
Second: Swain
Roll Call:
Fiocca Yes
Swain Yes
Murray Absent
Wichterman Yes
Mahaney Yes

ORDINANCES FOR PUBLIC HEARING AND ADOPTION:

260-2013 An Ordinance of the City of Cape May Updating the List of Historic Structures

Mayor Mahaney asks for a motion to open the Public Hearing.

Motion: Wichterman
Second: Swain

PUBLIC HEARING PORTION:

Sandy Johnson - 1239 Washington Street, Cape May, NJ inquires as to why her 1930 bungalow has been listed as a Historic Structure and also why a resident must bear the burden of owning a Historic Structures. Ms. Johnson believes that her house has no historic value and improvements have been made to her home including vinyl siding and soffit and a new roof. In 1993, Ms. Johnson advises that a survey was done on her home by the city and it was listed as noncontributing.

Mayor Mahaney asks Ms. Johnson if she has spoken to the City's Construction Office to review the file on her property.

Ms. Johnson advises that she did speak to the Construction Office.

Mayor Mahaney recommends to Council to amend the Ordinance to remove Ms. Johnson's property until she can schedule a meeting with the proper City Officials to discuss the matter.

Angie Myschko, President of the Girls Friendly Society, 644 Hughes Street, Cape May, NJ is here on behalf of the Holiday House at the aforementioned address. The property has been designated as a Key Property, comments Ms. Myschko.

Mayor Mahaney advises that the 644 Hughes Street property was changed from Key to contributing and the Mayor is also recommending to Council that the property be removed from the Ordinance until a meeting between the parties can be scheduled.

Anita Novino – 351 Congress Street, Cape May asks if the guidelines respecting designation are published so the residents can educate themselves on this matter.

Mayor Mahaney responds that the Construction Office has all the information and the surveys regarding the designations.

Bernie Haas, 1016 Illinois Avenue, Cape May asks how many properties are to be surveyed, and when the surveys will be finished.

Mr. MacLeod responds that the intended goal at the end of this process is to survey 1,525 properties. The adoption of Ordinance 260-2013 covers 349 properties and Mr. MacLeod advises that the completion of the surveys will depend upon the availability of funds through grant money along with matching funds by the city.

Public Hearing Closed.

Motion to remove 1239 Washington Street and 644 Hughes Street, Cape May, NJ from Ordinance 260-2013

Motion:	Mayor
Second:	Wichterman
Roll Call:	
Fiocca	Yes
Swain	Yes
Murray	Absent
Wichterman	Yes
Mahaney	Yes

Motion to Approve Ordinance 260-2013, as Amended

260-2013 An Ordinance of the City of Cape May Updating the List of Historic Structures
as Amended

Motion:	Mayor
Second:	Wichterman

Roll Call:

Fiocca	Yes
Swain	Yes
Murray	Absent
Wichterman	Yes
Mahaney	Yes

Mayor Mahaney asks the City Clerk and the City Manager to schedule a meeting with the Construction Office, the consultant that performed the surveys, and the owners of 1239 Washington Street, Cape May and 644 Hughes Street, Cape May.

Motion:	Mayor
Second:	Wichterman
Roll Call:	
Fiocca	Yes
Swain	Yes
Murray	Absent
Wichterman	Yes
Mahaney	Yes

Resolutions offered by Consent.

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

- 57-02-2013 Resolution Approving Certified List of LOSAP Qualified City of Cape May Volunteer Fire Department Members for the year 2012
- 58-02-2013 Payment of Bills "A"
- 58-02-2013 Payment of Bills "B" **Removed from consent**
- 59-02-2013 A Resolution Providing for a Meeting Not Open to the Public in accordance with the Provisions of the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-12 – Beach Theatre Foundation
- 60-02-2013 Resolution of the City of Cape May Approving Bid for Lease of Cape May Convention Hall Retail Stores B and C

PUBLIC PORTION:

Bernie Haas – 1016 Illinois Avenue, Cape May inquires as to the purpose of the closed session regarding the Beach Theater Foundation.

Mr. Monzo advises that Council needs to discuss the obligation and the various responses to the City's recent letter to the obligors, regarding this matter. Further, Mr. Monzo advises that this is a legal matter and may not be discussed in open session.

Mr. Haas reads a prepared statement on behalf of the Beach Theater Foundation, a copy of which is attached hereto.

Jim Matthews, President of the Volunteer Fire Company of Cape May inquires as to Resolution 57-02-2013 affecting the LOSAP program. Mr. Matthews advises that LOSAP was established in the City of Cape May in 2004 when each member received \$1,150.00 per year. In 2008, the members received an increase to \$1,258.00 and Mr. Matthews believes that every three years, the members should realize an increase. Mr. Matthews wants to know if there is money in the 2012 budget for another increase to the LOSAP member. As President of the Volunteer Fire Department, Mr. Matthews would like Council to consider increasing the LOSAP payment by \$97.00 per member.

Mr. MacLeod responds that the amount budgeted is through a point system process and each individual that participates in the program must go through the year and earn a certain number of points to qualify. The City will review as to who qualifies advises Mr. MacLeod.

Mr. Matthews would like to know if any surplus monies budgeted for LOSAP payments go into the following year's LOSAP budget or back into the City budget.

Mr. MacLeod advises that the program was not set up for an automatic CPI adjustment. Mr. MacLeod would like to meet with the volunteer members to review the program and the point system.

Mayor Mahaney asks Mr. MacLeod to set up a meeting as soon as possible.

Motion: Wichterman
Second: Fiocca
Roll Call:
Fiocca Yes
Swain Yes
Murray Absent
Wichterman Yes
Mahaney Yes

58-02-2013 Payment of Bills "B"

Motion: Mahaney
Second: Wichterman
Roll Call:
Fiocca Yes
Swain Abstain
Murray Absent
Wichterman Yes
Mahaney Yes

MINUTES:

REPORTS RECEIVED BY THE CLERK:

Cape May Police Department Monthly Report dated January, 2013
Assessor's Office Monthly Report dated February 6, 2013
Cape May Fire Department Monthly Report dated January, 2013
Construction Office Activity Report for January, 2013

Motion: Wichterman
Second: Swain
Roll Call:
Fiocca Yes
Swain Yes
Murray Absent
Wichterman Yes
Mahaney Yes

UNFINISHED BUSINESS:

NEW BUSINESS:

- A) City Attorney
- B) City Manager
- C) City Clerk
- D) Councilmembers Fiocca asks if the the guidelines for the HPC structures and the determination can be published on the Cape May City website.

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.

Terri Werner – 311 Claghorn Place, Cape May is representing the residents in the area whose properties were affected by flood waters from Hurricane Sandy. Ms. Werner believes that her neighborhood is the only area in Cape May that floods and tells us that Congress Street is uninhabitable. The tidal gate which is supposed to be self regulated on Perry Street is broken, advises Ms. Werner and the residents are concerned and would like to know how quickly this can be resolved. Ms. Werner offers a letter to Mayor and Council regarding the matter and would like this to be on record.

Mr. MacLeod advises that he contacted Dale Foster regarding the matter and Mr. Foster is aware that the tidal gate needs to be repaired. Mr. MacLeod advises that the City of Cape May does not own the tidal gate but that the County has already advertised for bids for replacement. Mr. Ms. Werner asks if the residents can learn the progress and attend the meeting.

Mayor Mahaney would like to have Dale Foster attend a council meeting regarding this matter.

Ruth Leo – 237 Capehart Lane, Cape May is also concerned about the flooding in this area because the mouth of the creek at the canal is not very wide.

Sandy Johnson, 1239 Washington Street, Cape May asks about proposed legislation regarding beach tags and beach replenishment. Ms. Johnson recently received a letter from Jeff Van Drew regarding said matter. Ms. Johnson is concerned that if that legislation is adopted, the effect on the taxpayer in the City of Cape May will be great.

Mayor Mahaney was surprised to hear that Ms. Johnson received a letter because he does not believe the Bill will be passed. However, the Mayor advises that if passed, it would cost the tax payers \$.08 on their tax bill.

John Fleming – 1484 Washington Street, Cape May is concerned about the overtime of the Police and Fire Department during the first two months of 2013. Mr. Fleming asks if the overtime is comparable to last year's overtime. Also, Mr. Fleming asks if the city has considered hiring an in-house Engineer as he believes the City will save a lot of money if they do so.

Mr. MacLeod responds that he has not compared this year's overtime figures to last year's figures. Mr. MacLeod will schedule a meeting with the Police Chief and Fire Chief to try and improve this overtime costs.

George Costich – Victorian Towers, Cape May asks if the 2013 Budget will include a new sound system, screen and DVD projector so the City can join the 21st Century. Also, Mr. Costich advises that a week ago, there was a severe Nor' Easter that dumped 30" of snow in some cities. The City of Cape May was lucky, comments Mr. Costich, and he believes the City needs to purchase plows that will handle that much snow.

Mayor Mahaney advises that the City is looking into using military equipment for severe weather conditions.

Mike Sheehan, 692 Crawford Road, Cape May thanks the Mayor, Council and City Manager for meeting with the contractors and asks when the Ordinance changing the allowable work hours will go into effect.

Mayor Mahaney advises that a second reading and a public hearing will take place at the next Council Meeting and the Ordinance will be effective twenty days after final publication.

COUNCIL & CITY MANAGER COMMENTS

CLOSED SESSION Beach Theatre Foundation

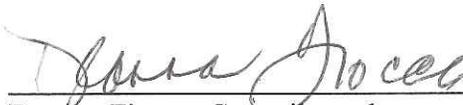
Motion made by Mayor Mahaney to go into closed session at approximately 9:05 P.M.

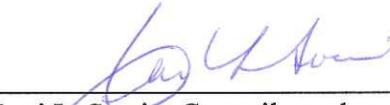
ADJOURNMENT

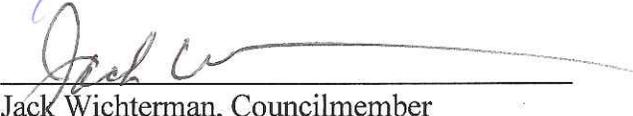
Motion made by Councilmember Wichterman to go back into open session. Motion made by Councilmember Wichterman, seconded by Councilmember Fiocca to adjourn. The meeting adjourned at 9:25 P.M.

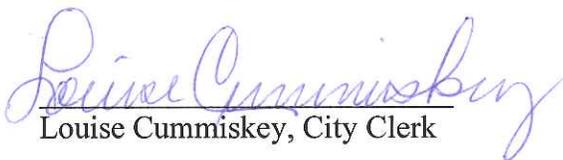

Edward J. Mahaney, Jr., Mayor

ABSENT
William H. Murray, Deputy Mayor


Deanna Fiocca, Councilmember


Terri L. Swain, Councilmember


Jack Wichterman, Councilmember


Louise Cummiskey, City Clerk

I have been authorized to make the following statement for the record on behalf of the Board of Trustees of the Beach Theatre Foundation:

We do not know the exact nature of the closed session the Council has chosen to have this evening concerning the BTF. We do know that, even though the BTF has paid back nearly half the \$100,000 loan made to it within months of its original maturity, the City nevertheless has threatened to sue pledgors who had promised to contribute toward the repayment of that debt, but have not yet fully discharged their obligations.

Clearly, the repayment record demonstrates we have been pursuing collections from our pledgors diligently, and we will continue to pursue them to avoid wasteful litigation. However, should the City commence a suit naming the BTF as a party seeking to collect the debt from our pledgors, the BTF Board feels it will have no recourse but to file a bankruptcy petition in federal court. We understand the effect of such a filing will be to automatically stay any City legal action, may lead to the City being forced to disgorge collections preceding the filing, and ultimately could result in the City, as an unsecured creditor, sharing in any recovery with the rest of our creditors.

Bernard Haas, Treasurer
Beach Theatre Foundation

2/12/13
February 12, 2013

To: City of Cape May Mayor and Council Members
Mayor Edward J. Mahaney
Councilmember Deanna Fiocca
Councilmember Terri Swain
Councilmember Jack Wichterman
Councilmember William Murray

During Hurricane Sandy, the flow of water from Cape Island Meadows through the pipes leading to Cape Island Creek were seriously inhibited due to a faulty self regulating tide gate located at the basin in the Perry/West Perry Street area.

The self-regulating tide gate's flapper is broken so that the water cannot flow into Cape Island Creek and then out to the Harbor and Ocean as intended. Instead the basin acts like a bathtub with its drain plugged and the water running, as it reaches the top it spills over and runs to the lowest points, which include parts of Perry and West Perry Street, but especially runs to Capehart Lane, Claghorn Place, Congress Street, Windsor Street, Grant Street and Park Boulevard (in other words the site of the recent Lewandowski Construction (LCI) Sanitary Sewer Improvement construction project begun in Fall of 2010 and not completed until Fall of 2011.

This project ran into many delays and major problems. LCI also broke into the pipe that carries the water from the meadows to cape island creek causing water to cascade down Grant Street.

The State of New Jersey, Department of Environmental Protection authorized funding in July, 2003 for a restoration of the wetlands in Lower Cape May Meadows. This funding created drainage ditches to restore the flow and link hydrological segment reservoirs within existing ponds; and construction of a shallow earthen water retaining structure and a self-regulating tide gate at Cape Island Creek (the above mentioned broken gate) to allow for a 25 acre tidal marsh.

These tide gates run from the Lighthouse area through the Meadows, there are four of these gates, each gate is open on one side and closed on the other, allowing for half the possible water flow going toward Cape May. At the fourth gate there is a one foot drop creating a water fall effect leading to the Fow Tract and the underground pipe carrying the water to the basin on Perry Street. As this water rushes down it finds itself trapped in the "bathtub of this basin". There is no way for the water to empty into Cape Island Creek as intended since the self-regulating tide gate's flapper is broken. (see photo)

During Hurricane Sandy, the water from the tidal surge, high tide and rain backed up flooding the named areas and causing property damage to the homes on these

streets. Two properties on Congress Street are uninhabitable due to the water damage.

Cape May escaped this storm almost unscathed, even the most notorious Frog Hollow area did not experience flooding. Obviously, there is a problem in our area. This problem seems to have occurred during the LCI project when LCI was attempting to de-water the project area and damned both ends of this vital pipe, damaging it and not repairing the problem.

Now that the City is aware that there is a problem, we would like to know how quickly repairs will be made so that we do not have a reoccurrence during the next storm.

The flooding is so bad that even during a simple rainstorm, the water begins to back up and the water bubbles up through the manhole covers.

The flooding in this area was corrected in 1986 when the rusty pipes were replaced with new concrete piping, its reoccurrence coincides with the LCI project and the damage done to the tide gate at Perry Street and perhaps also exacerbated by the broken pipe on Grant Street.

Sincerely,

Concerned Citizens residing in aforementioned impacted area

Terri and George Werner
311 Claghorn Place

Ruth and John Leo
237 Capehart Lane

Anita and Bert Novino
351 Congress Street

John and Becky Adams
339 Congress Street

James Pointer
309 Claghorn Place

James and Sue Cima
314 Claghorn Place

Phil and Judy Caruso
315 Congress Street

Jack and Sandy Courier
398 Congress Street

Phyllis and Allen Rubel
336 Congress Street

Bill Alexander
394 Congress Street

Patricia and Leo Nardone
450 W. Perry Street

Charles and Yvonne Ryan
428 W. Perry Street

Kathy and George Mulligan
238 ½ Perry Street

Uschi Uelzhoeffler
238 Perry Street

Sandy Thomson
217 Windsor Avenue

Alan and Barbara Coller
212 Grant Street

Kathleen and Geno Mauro
313 Congress Street

Nancy Granick
311 Congress Street

Note: Flooded Street photos were taken before the Hurricane landed; water rose much higher later in the evening.

