

Mayor & Council Regular Meeting – March 26, 2019

The Regular meeting of the Mayor and Council of the Borough of North Caldwell was held on Tuesday, March 26, 2019 at Borough Hall, Gould Avenue, North Caldwell, New Jersey and began at 7:31pm.

Mayor Alessi thanked Mayor Ed Davis and Chief William Theilacker from Essex Fells for being present. Mayor Alessi called the meeting to order announcing that notice was provided in accordance with the requirements of Chapter 231, P.L. 1975.

Roll Call indicated the following present:

Present: Mayor Alessi, Council President Santomauro, Councilman Astorino, Councilman Chiaia, Councilman Kessler, Councilman Rees

Absent: Councilman Raymond
Councilman Raymond joined the meeting in progress.

Also present were: David M. Paris, Esq., Borough Attorney; Frank Zichelli, Borough Administrator/Engineer; Richard Mondelli, Chief Financial Officer; Mark Deuer, Police Chief; and Tami Michelotti, Borough Clerk.

Mayor Alessi asked the daughters of Joe Angelo, to lead the Pledge of Allegiance.

Mayor's Report

Mayor Alessi announced the hire of Kevin O'Sullivan to replace Mr. Frank Zichelli as Borough Administrator upon Mr. Zichelli's retirement. Mayor Alessi thanked the Personnel Committee for their work to review candidates. He noted that Mr. O'Sullivan has a background in administration and civil engineering. Mayor Alessi stated that proposals have been received in response to the Borough's RFP for municipal engineering consulting services and are currently being reviewed. He added that PSE&G has gas main upgrades scheduled for Sunset Road, Valley View Place and Glenview Road. Mayor Alessi announced Tree Seedling Day on April 13 and Opening Day of baseball and softball on May 4.

Swearing In of Municipal Prosecutor

Mayor Alessi welcomed The Honorable Donald O'Connor to administer the Oath of Office to Joseph Angelo, Esq. as Municipal Prosecutor for the Municipal Courts of North Caldwell and Essex Fells. Upon being sworn in, Mr. Angelo thanked Mayor Alessi, Mayor Davis, Chief Deuer, Chief Theilacker and Judge O'Connor for the honor and privilege to serve both boroughs as Prosecutor. He recognized the Police Departments of both boroughs as second to none.

Mayor Alessi announced a brief recess so that Mr. Angelo could take photographs with the Governing Body and his family.

The public meeting was reconvened at 7:48pm.

Citizens to be Heard

Mr. Richard Verde – 8 Hickory Drive

Mr. Verde asked the Council to broadcast the public meetings to satisfy the public's need for open government. He added that he was pleased to see Mr. Angelo appointed as Prosecutor as he recommended three years prior.

Mr. Paul Scagnelli – 7 Stony Brook Drive

Mr. Scagnelli thanked Mr. Zichelli for his email update regarding the proposed settlement agreement between the Borough and Pulte Homes and asked for a summary of the agreement from the Council. Mr. Paris stated that the proposed settlement was a culmination of three mediation sessions with Justice Zazzale as mediator and representation from the Borough which included himself, JIF attorney Howard Mankoff, Mayor Alessi, Council President Santomauro, Councilman Raymond, and Mr. Zichelli. Mr. Paris stated that he could not discuss the details of the negotiation but described elements of the proposed settlement agreement including: the construction of homes currently under contract, the construction of homes not yet under contract, a provision for residents who have suffered property damages as a result of the Pulte development, advertising as an active adult community, the planting of an additional \$12,000 worth of trees with placement designated by the Borough, no exchange of any monetary payments by either party to the other, and no changes to the Developer's Agreement which would not be superseded by the proposed settlement agreement.

Mr. Paris explained the provision that the Borough negotiated as part of the settlement for the residents who suffered damages as a result of Pulte's development. He stated that homeowners who feel they have been damaged will have a mechanism to have their claims addressed. He noted that residents

who opt-in to the arbitration should file claims with Pulte which will initiate a 60-day claim review. He added that if no resolution is made within 60 days, the matter would go to arbitration and be assigned to a retired Superior Court Judge for determination of restitution. Mr. Paris added that Pulte would then have 30 days to make payment to the homeowner as per the arbitrator's findings and that Pulte would pay the cost of the arbitration with no payment due by the homeowner. He added that residents do not have to participate in the binding arbitration. Mr. Paris stated that the arbitration mechanism provides a means for residents to have their claims addressed at no cost, by a neutral third party, and for payment to be made within a limited period of time. He noted that the Borough's intention was to have Pulte provide a process that would be timely and efficient.

Mr. Scagnelli asked if the Borough would receive compensation from Pulte for expenses incurred for legal costs, inspection costs, engineering costs, etc. Mr. Paris stated that the agreement does not provide for any monetary payment between the two parties but that the Borough has the developer's escrow funds.

Mr. Scagnelli asked for an update regarding the Glenview Road culvert repair and if it was part of the settlement agreement. Mr. Paris stated that the report was still under review by the Council. He added that the report could soon be made public as it was not a part of the resulting settlement agreement. He noted that once the settlement agreement is signed by both sides and filed with the courts, the report could be made public by the Council and the Borough's Records Custodian.

Mr. Scagnelli asked for the name of the third party claims adjuster. The Council agreed to get the information and provide it to the residents. Mr. Scagnelli stated concern regarding Pulte's responsibility to adhere to the decisions reached during arbitration. Mr. Paris stated that the agreement would be enforceable under the laws of the State of New Jersey and that the arbitration would be binding.

Mr. Scagnelli addressed the continuing leaks from cracks in detention basin 2. Mr. Zichelli confirmed that the basin wall is 16-inches deep. Councilman Rees suggested that the Borough hire a structural engineer to perform an independent evaluation in addition to reviewing Pulte's structural engineering report. Mr. Scagnelli asked if the settlement agreement addresses the swales and berms behind Ferndale Road and underground water flows. Mr. Paris stated that they were not part of the negotiation as they are encompassed in the developer's agreement which remains entirely intact and is non-negotiable.

Mr. Scagnelli addressed the NJDEP requirement that the detention basins meet Class 4 dam safety standards and asked the Council to have an independent structural engineer verify that all basins meet the class 4 dam safety standard. He also asked for certification that the spillways have 24-hour, 100-year type 3 plus 50% storm ratings. Mr. Zichelli confirmed that the information and request was sent to the State to get the classification.

Mr. Scagnelli stated concern for the diminishing value for the existing residents' homes due to the flooding. He added that residents must disclose the damage when attempting to sell their homes. Council President Santomauro suggested that devaluation of a home should be included as damages in a resident's claim brought to arbitration.

Mr. Scagnelli stated concern for timing of residents' claim settlements and noted that Pulte will continue with construction well before claims are settled. He thanked the Council for their efforts during mediation but asked that the Developer's Agreement be strictly enforced. Mr. Zichelli stated that detention basins must be completed and trees must be planted before phase 2 of the construction can begin.

Councilman Raymond joined the meeting at 8:40pm.

Ms. Carmella Cannistraci – 17 Glenview Road

Ms. Cannistraci thanked the Governing Body for circulating the proposed settlement agreement. She stated that she was eager to see the Petry Engineering report regarding the Glenview Road culvert. She urged the Council to release the report to the public.

Ms. Cannistraci asked if there are limits to the arbitration costs that Pulte would cover for current residents' claims. Mr. Paris stated that there is no specific language that would limit arbitration costs. She asked how long the arbitration mechanism would be offered to residents. Mr. Paris confirmed that the settlement agreement states no time limit. She noted that many residents are only aware of

Mayor & Council Regular Meeting – March 26, 2019

preliminary damages so far and stated that more damages may be yet to come. Mayor Alessi stated that the claims adjuster for Pulte is Gallagher Basset.

Mr. Bernie Doyle – 31 Glenview Road

Mr. Doyle stated that leaks in detention basin 2 are coming from cracks in the 16-inch portion of the basin wall.

Mr. Dan Gallagher – 36 Ferndale Road

Mr. Gallagher expressed concern that the value of landscaping and trees with regard to waterflow is underestimated.

Mr. Gallagher asked that the developer's performance bond be withheld until construction is done satisfactorily. Mr. Paris stated that State statute requires the release of the bond once the inspections are final. He added that portions of the bond can be released as improvements are made.

Mr. Gallagher stated that detention basin 2 must be complete before phase 2 homes can be built. He noted that the basin wall has a hole through which water drains out, making a new feed into the stream that flows through the Glenview culvert. Mr. Zichelli explained the functionality of the basin and noted that the design for the discharge is specific. He offered to speak with Mr. Rossi regarding the erosion into the woods.

Mr. Gallagher asked for the status of detention basin 3. Mr. Zichelli stated that it works well but still requires some landscaping. Mr. Gallagher asked that it be certified as meeting standards.

Mr. Gallagher stated that each residence should be tested for underground water flow. He noted that the blasting caused an underground shift in water flow. Mr. Zichelli asked that those residents with problems with underground water should document their issues.

Ms. Sherri London – 108 Mountain Avenue

Ms. London stated that she met with Pulte two-weeks prior at Ms. Cannistraci's home at which time she asked Mr. Mullen from Pulte to visit her home and witness her damages. She stated that she had not yet been contacted by Pulte. She added that she fears leaving her home for business and returning to flooded conditions.

There being no further comment from the public, Mayor Alessi announced a brief recess at 9:06pm. The public meeting was reconvened at 9:14pm.

Approval of Minutes

Council President Santomauro moved to accept the minutes from the Special Meeting and Executive Session of December 28, 2018, seconded by Councilman Raymond. Councilman Astorino abstained as he was not in attendance at the meeting on December 28, 2018. Said motion was passed with five affirmative votes and one abstention.

Committee Reports

Legal and Ordinance

Councilman Raymond introduced Ordinance O-3-19 An Ordinance to Exceed the Municipal Budget Appropriation Limits and to Establish a CAP Bank. He stated that a public hearing is scheduled for Tuesday, April 30, 2019 at 7:30pm. Council President Santomauro seconded the motion. Said motion was carried unanimously with six votes.

Resolution R-66-19 A Resolution Authorizing Settlement of Contested Litigation and Execution of a Settlement Agreement in the Matter *Pulte Homes of N.J. Limited Partnership vs. Borough of North Caldwell, et. al* was read. Motion was made by Councilman Raymond, seconded by Council President Santomauro. Said motion was carried unanimously with six votes. Councilman Chiaia thanked the Borough representatives who participated in the mediation.

Public Safety

Councilman Chiaia asked to present the North Caldwell Volunteer Fire Department report as Fire Chief John D'Ascensio was present in the audience. He noted that there were 16 calls for the month and a fire involving telephone wires on East Greenbrook Road. He noted that the Fire Department was on site for

Mayor & Council Regular Meeting – March 26, 2019

three hours when Verizon did not show on scene. He also recognized Chief D'Ascensio for a letter of appreciation received from resident Marion O'Neill.

Personnel/Administration

Resolution R-67-19 A Resolution Accepting the Resignation of Borough Administrator and Borough Engineer, Frank Zichelli, Jr. was tabled until later in the meeting.

Finance

Councilman Astorino made a motion to accept the Tax Collector's Report for February 2019, seconded by Councilman Kessler. Said motion was carried unanimously with six votes.

Resolution R-68-19 A Resolution Approving the Payment of Bills was read. Motion was made by Councilman Astorino, seconded by Councilman Kessler. Said motion was carried unanimously with six votes.

Resolution R-69-19 A Resolution Approving 2018 Budget Transfers was read. Motion was made by Councilman Astorino, seconded by Councilman Kessler. Said motion was carried unanimously with six votes.

Resolution R-70-18 Introduction 2018 Municipal Budget Introduction was read. Motion was made by Councilman Astorino, seconded by Councilman Kessler. Said motion was carried unanimously with six votes.

Resolution R-71-18 Deferred Local District School Tax was read. Motion was made by Councilman Astorino, seconded by Councilman Kessler. Said motion was carried unanimously with six votes.

Resolution R-72-18 Deferred Regional High School Tax was read. Motion was made by Councilman Astorino, seconded by Councilman Kessler. Said motion was carried unanimously with six votes.

Resolution R-73-19 A Resolution of the Mayor and Council of the Borough of North Caldwell Authorizing for Redemption and Cancellation of Record of Tax Lien Redemption Block 903, Lot 1 was read. Motion was made by Councilman Astorino, seconded by Councilman Kessler. Said motion was carried unanimously with six votes.

Public Safety

Councilman Chiaia delivered the Police Department Public Safety and Detective Bureau Reports for February 2019. He noted that 861 calls were processed by Dispatch for North Caldwell alone with 144 traffic tickets issued. He thanked Chief Deuer for his scheduling of officers to keep overtime hours to only 60 hours for the month. Councilman Chiaia commended the Municipal Court staff, judge, prosecutor and police with regard to a letter of appreciation from a defense attorney.

Resolution R-74-19 A Resolution Appointing Volunteer Fire Department Member for the Borough of North Caldwell was read. Mayor Alessi noted the increasing membership of the Volunteer Fire Department and thanked Chief D'Ascensio for his leadership. Motion was made by Councilman Chiaia, seconded by Council President Santomauro. Said motion was carried unanimously with six votes.

Councilman Chiaia announced that the County agreed to install a second lane at the bottom of Mountain Avenue for left turn traffic onto Pompton Avenue. He added that the addition would be installed once construction on Pompton Avenue in Cedar Grove was completed.

Chief Deuer noted that the Team 94 Color Run in support of Adult Autism was planned for April 7, 2019 and has 504 participants to date. He added that close to \$100,000 has already been raised and asked for the support of the Governing Body.

Chief Deuer added that the NCPD received a grant for the Click It or Ticket campaign.

Public Works

Council President Santomauro presented the Construction Permit Activity Report for February 2019. She noted that 23 permits were issued for the month.

Council President Santomauro had no updates from the Animal Control Department for the month.

Mayor & Council Regular Meeting – March 26, 2019

Resolution R-75-19 A Resolution Approving the Increase in Water Rates was read. Council President Santomauro stated that rates had not been raised in many years but that rates charged to the Borough increased. Motion was made by Council President Santomauro, seconded by Councilman Raymond. Said motion was carried unanimously with six votes.

Councilman Chiaia recused himself at 9:32pm for the discussion of the Recyclable Materials Collection and Delivery Service bid report.

Council President Santomauro presented the bid report for Recyclable Materials Collection and Delivery Service. She noted that three bids were received and reviewed by Mr. Zichelli, Mr. Paris and the Council. The low bidder, Get A Can, was noted as the Borough's current collection provider and performs satisfactorily. Mr. Zichelli noted that the five-year contract provides the best pricing. He added that it's slightly more than the current contract.

Resolution R-76-19 A Resolution Authorizing the Award of Contract for Recyclable Materials Collection and Delivery Service was read. Motion was made by Council President Santomauro, seconded by Councilman Astorino. Councilman Chiaia recused himself. Said motion was carried unanimously with five affirmative votes.

Councilman Chiaia returned to the meeting at 9:34pm.

Resolution R-77-19 A Resolution Authorizing the Award of Contract for Municipal Engineering Services was tabled until after Executive Session discussion regarding Contract Negotiations.

Resolution R-78-19 A Resolution Authorizing the Application to Hazardous Discharge Site Remediation Fund for Funding for Remedial Action Activities of Walker's Pond was read. Mr. Zichelli announced the completion of the second part of the grant application for the clean-up of Walker's Pond. He noted that the grant should pay for 75% of the clean-up. Mr. Zichelli added that this phase of the grant application required submission of a master plan for the property which was already completed by Petry Engineering. He planned to mail the paperwork the following day. Motion was made by Council President Santomauro, seconded by Councilman Chiaia. Said motion was carried unanimously with six affirmative votes.

Recreation

Councilman Kessler provided the Recreation Director's Report for March and April 2019. He announced the end of the recreation basketball and the league champions which would be honored at the next Council meeting. Councilman Kessler stated that the new Cal Ripken baseball and softball league will have 17 teams and will celebrate Opening Day on May 4, 2019 at 9:00am.

Councilman Kessler provided updates on the Seniors meetings, Ski Club Season and the upcoming Track and Field season. He added that the Spring Spectacular and Egg Hunt was planned for Tuesday, April 16, 2019. He announced the opening of the municipal pool on May 25 with an Open House tentatively scheduled for June 1.

Liberty Field Scoreboard Signage

Councilman Raymond noted that the North Caldwell Recreation Foundation has been working on the installation of two scoreboards at Liberty Field. He shared the proposal for "Welcome to Liberty Park" on the sign closest to the Liberty Field parking lot. He reviewed the naming conventions of each entity of Liberty Park to include Field 1, Field 2, the tennis courts, the municipal pool, and Fireman's Field. He noted that there would not be a field named "Liberty Field". The Council had no objections.

Bid Report for Pool Concession Stand

Councilman Kessler noted that no bids submitted for the pool concession stand. Mr. Zichelli stated that this was the second bid for the concession stand with no bids submitted. He stated that the Borough would be free to negotiate with vendors at this time. The Council agreed.

Resolution R-79-19 A Resolution Authorizing the Execution of an Access, Hold Harmless and Indemnification Agreement with K&J Accessories, Inc. was read. Councilman Kessler explained that this would allow the scoreboard installer access to the turf field for installation. Motion was made by Councilman Kessler, seconded by Councilman Raymond. Said motion was carried unanimously with six affirmative votes.

Mayor & Council Regular Meeting – March 26, 2019

Resolution R-80-19 A Resolution Authorizing the Execution of an Access, Hold Harmless and Indemnification Agreement with Flanagan’s Contracting Group, Inc. Motion was made by Councilman Kessler, seconded by Councilman Raymond. Said motion was carried unanimously with six affirmative votes.

Resolution R-81-19 A Resolution Appointing Municipal Pool Manager was read. Motion was made by Councilman Kessler, seconded by Councilman Raymond. Said motion was carried unanimously with six affirmative votes.

Resolution R-82-19 A Resolution Appointing Assistant Municipal Pool Manager was read. Motion was made by Councilman Kessler, seconded by Councilman Raymond. Said motion was carried unanimously with six affirmative votes.

Resolution R-83-19 A Resolution Appointing Head Director of the 2019 Summer Fun and Kiddie Camp was read. Motion was made by Councilman Kessler, seconded by Councilman Raymond. Said motion was carried unanimously with six affirmative votes.

Resolution R-84-19 A Resolution Appointing Assistant Director of the 2019 Summer Fun and Kiddie Camp was read. Motion was made by Councilman Kessler, seconded by Councilman Raymond. Said motion was carried unanimously with six affirmative votes.

Resolution R-85-19 A Resolution Appointing Emergency Medical Technician for the 2019 Pool and Summer Fun/Kiddie Camp Season was read. Motion was made by Councilman Kessler, seconded by Councilman Raymond. Said motion was carried unanimously with six affirmative votes.

Resolution R-86-19 A Resolution Authorizing the Hiring of Additional Part-Time Seasonal Employees for the 2018-2019 Basketball Season – Referees was read. Motion was made by Councilman Kessler, seconded by Councilman Raymond. Said motion was carried unanimously with six affirmative votes.

Personnel/Administration (continued)

Resolution R-67-19 A Resolution Accepting the Resignation of Borough Administrator and Borough Engineer, Frank Zichelli, Jr. was read. Mr. Zichelli confirmed that he thoroughly reviewed, read and agreed to the separation agreement detailing his retirement. Motion was made by Councilman Rees, seconded by Councilman Kessler. Said motion was carried unanimously, but with regret, with six affirmative votes. The Mayor and Council extended their appreciation to Mr. Zichelli for this commitment to the Borough.

Executive Session

Resolution R-87-19 A Resolution Authorizing the Mayor and Council of the Borough of North Caldwell to Hold a Closed Session Meeting for Certain Specified Purposes: A. Litigation: (1) Pulte Homes; B. Contract Negotiations: (1) Municipal Engineering Services, (2) 620 Mountain Avenue, (3) RPM/White Rock Urban Renewal Associates; C. Anticipated Contract Negotiations: (1) Verona Municipal Court, (2) Drainage Study; D. Personnel: (1) DPW, (2) Recreation Program Director was read. Motion was made by Council President Santomauro, seconded by the Council

The meeting was re-opened to Public at 11:01pm. The Council decided to table the decision on appointment of a Municipal Engineering consultant until the new Borough Administrator could conduct interviews. Therefore, Resolution R-77-19 A Resolution Authorizing the Award of Contract for Municipal Engineering Services was tabled until after Executive Session discussion regarding Contract Negotiations was deferred until a subsequent meeting.

There being no other matters to be addressed by the Governing Body at this time, a motion was made by Council President Santomauro, seconded by the Councilman Chiaia, that this meeting be adjourned at 11:01pm. This motion was carried unanimously.

Respectfully submitted,



Tami Michelotti
Borough Clerk