

BOROUGH OF SURF CITY LAND USE BOARD

813 Long Beach Boulevard

January 25, 2023

7:00 pm

The meeting was called to order. Kevin Quinlan, Esq. administered the oath of office to Sandra Klose, Alan Mannherz, James Russell, and Jaime Ryan.

All present joined Chairman Hartney in saluting the Flag.

The following members were present: Peter Hartney, Gavin Hodgson, Sandra Klose, Alan Mannherz, James Russell, Richard Savianeso, George Wachter, David Wright, John Franzoni & Jaime Ryan. Absent: Paul Hoover.

The Board Engineer, Frank Little, Jr. was also present.

The Open Public Meeting Statement was read by Chairman Hartney, as follows: in compliance with the "Open Public Meetings Act" of the State of New Jersey, adequate notice of this meeting of the Board of Surf City Land Use Board has been provided to three newspapers & published in the December 15, 2022, edition of the Beach Haven Times.

Chairman Hartney also read the following statement: this meeting is a judicial proceeding. Any questions or comments must be limited to issues that are relevant to what the Borough of Surf City Land Use Board may legally consider in reaching a decision. Decorum appropriate to a judicial hearing must be maintained all the time.

Counselor Quinlan opened the nomination for the position of Chairman. Mr. Russell nominated Mr. Hartney. Mrs. Klose seconded the motion. With a vote in the affirmative, Mr. Hartney was nominated for Chairman.

Roll call reflected the following in the affirmative: Mr. Hartney, Mr. Hodgson, Mr. Mannherz, Mrs. Klose, Mr. Russell, Mr. Savianeso, Mr. Wachter, Mr. Wright, Mr. Franzoni & Mr. Ryan. Absent: Mr. Hoover.

Chairman Hartney opened the nomination for the position of Vice Chairman. Mr. Russell nominated Mr. Mannherz. Mrs. Klose seconded motion. With a vote in the affirmative, Mr. Mannherz was nominated for Vice Chairman.

Roll call reflected the following in the affirmative: Mr. Hartney, Mr. Hodgson, Mr. Mannherz, Mrs. Klose, Mr. Russell, Mr. Savianeso, Mr. Wachter, Mr. Wright, Mr. Franzoni & Mr. Ryan. Absent: Mr. Hoover.

Chairman Hartney opened the nomination for the position of Board Secretary. Mr. Russell nominated Mrs. Klose. Mr. Mannherz seconded the motion. With a vote in the affirmative, Mrs. Klose was elected to be the Board Secretary.

Roll call reflected the following in the affirmative: Mr. Hartney, Mr. Hodgson, Mr. Mannherz, Mrs. Klose, Mr. Russell, Mr. Savianeso, Mr. Wachter, Mr. Wright, Mr. Franzoni & Mr. Ryan.
Absent: Mr. Hoover.

Mrs. Klose moved to approve Resolution 2023-02. Mr. Mannherz seconded that motion. With a vote in the affirmative, the following resolution was approved.

WHEREAS, pursuant to the provisions of N.J.S.A. 19:44A-20.5 the Borough of Surf City Land Use Board will need the following professional services as non-fair and open contracts:

Land Use Board Attorney

Land Use Board Engineer; and

WHEREAS, the Chief Financial Officer has determined and certified that the value of the acquisition may exceed \$17,500, the maximum amount of the contract to be awarded under this resolution is set forth in the 2023 Municipal Budget; and

WHEREAS, funds are available for this purpose as certified by the Chief Financial Officer; and

WHEREAS, the listed individuals have submitted a proposal indicating they will provide the related services per their schedule of rates as attached or included in the agreement; and

WHEREAS, the listed individuals have completed and submitted a Business Entity Disclosure Certification. This certifies that they have not made any reportable contributions to a political or candidate committee in the Borough of Surf City in the previous one year. Also, that the contract will prohibit the them from making any reportable contributions through the term of the contract, and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) authorizes the award of contracts for professional services without competitive bids and requires that the resolution and contracts for each professional be made available for public inspection.

NOW, THEREFORE, BE IT RESOLVED by The Land Use Board of the Borough of Surf City, County of Ocean, State of New Jersey, as follows:

1. That the following professionals be appointed for the Land Use Board of the Borough of Surf City for a term of one (1) year, commencing January 1, 2023 and ending December 31, 2023.

Kevin Quinlan, Esq. - Land Use Board Attorney

Frank Little and the firm of Owen Little - Land Use Board Engineer; and

2. The Board Chair and the Board Secretary are hereby authorized and directed to execute the attached agreements with said professionals.

3. These contracts are without competitive bidding and are awarded as a professional service in accordance with N.J.S.A. 40A:11-5(1) (a) (i) of the Local Public Contracts Law because it is for services to be performed by a person(s) authorized to practice a recognized profession.

4. A notice of this action shall be printed once in the official newspaper of the Borough of Surf City

5. This resolution takes effect January 1, 2023.

6. A certified copy of this resolution shall be provided by the Clerk of the Board to the Chief Financial Officer and to each professional.

7. That a certificate of availability of funds executed by the Chief Financial Officer is annexed hereto.

Roll call reflected the following in the affirmative: Mr. Hartney, Mr. Hodgson, Mr. Mannherz, Mrs. Klose, Mr. Russell, Mr. Savianeso, Mr. Wachter, Mr. Wright, Mr. Franzoni & Mr. Ryan. Absent: Mr. Hoover.

Mr. Russell moved to approve Resolution 2023-01. Mr. Mannherz seconded that motion. With a vote in the affirmative, the following resolution was approved.

WHEREAS, the Open Public Meetings Act is the law of the State of New Jersey. It provides for adequate public notice to be given for meetings of the Land Use Board of the Borough of Surf City; and

WHEREAS, the Board is required to adopt a resolution to schedule regular meetings. the Board wishes to adopt, without limitation, its basic rules and regulations by this Resolution.

NOW, THEREFORE, BE IT RESOLVED the regular scheduled meetings of the Land Use Board of the Borough of Surf City shall be held at 7:00 p.m. on the fourth Wednesday of each month, except in cases of legal holidays or for other reasons when the meeting date may be hereinafter set forth. All meetings will be held at the Borough Hall Council Chambers located at 813 Long Beach Boulevard in Surf City, New Jersey. The public may only participate at such times as set forth in the agenda of the meeting or at the discretion of the presiding officer or chairperson.

Pursuant to this Resolution, the following dates for meetings shall be hereby adopted:

Wednesday, February 22, 2023 Wednesday, March 22, 2023

Wednesday, April 26, 2023 Wednesday, May 24, 2023

Wednesday, June 28, 2023 Wednesday, July 26, 2023

Wednesday, August 23, 2023 Wednesday, September 27, 2023

Wednesday, October 25, 2023 Wednesday, November 22, 2023

Wednesday, December 27, 2023

BE IT FURTHER RESOLVED that the Land Use Board meetings shall adjourn no later than 10:30 p.m. with no further testimony being taken or other business conducted unless ordered at the discretion of the Board.

BE IT FURTHER RESOLVED that in the event regular public meetings and/or additional meetings must be held at a date, time and place other than as set forth herein due to unforeseen circumstances; the same shall be held at a date, time and place as set by the Chairperson.

BE IT FURTHER RESOLVED that each applicant on the agenda that is scheduled shall have a maximum amount of time available to present testimony, witnesses and other proofs in support of its case. This shall include the comments of objectors or supporters. The maximum amount of time is of one (1) hour for each meeting the applicant appears on the agenda. The one (1) hour rule shall be enforced by the Board with any deviation allowed being solely in the discretion of the Board.

BE IT FURTHER RESOLVED that notice is hereby given that all forms in relation to the Initial Submission Checklist are available to the public for use in making application to the Board. Said related forms and sheets are offered as an aid to the applicant with the understanding that same do not represent the ordinances of the Borough in entirety. The complete legal burden is of the applicant; that it is still incumbent upon the applicant and/or his or her representatives to apply for and present their case appropriately pursuant to the rules and applicable ordinances and law.

BE IT FURTHER RESOLVED that the Board requires that all applications and appropriate plans in support thereof be filed with the Board Clerk as set forth in the Land Development Ordinance prior to any regular Board meeting and hearing. The Board Clerk has the discretion and authority to advise the applicant of a specific hearing date to appear before the Board provided there has been a determination by the Board Engineer and Board Attorney that the application and plans are deemed complete. The Board Clerk will forward all completed applications prior to the hearing date.

BE IT FURTHER RESOLVED that an informal review of concepts of plans for development as permitted by law may be requested by a developer and may be scheduled by the Board Clerk for a Board meeting at a date and time at the discretion of the Chairperson.

BE IT FURTHER RESOLVED Beach Haven Times, The Asbury Park Press and Atlantic City Press are hereby designated as the official newspapers to provide notice on matters of the Board.

This Resolution shall be published & posted not later than seven (7) days after its adoption, as required by law.

Roll call reflected the following in the affirmative: Mr. Hartney, Mr. Hodgson, Mr. Mannherz, Mrs. Klose, Mr. Russell, Mr. Savianeso, Mr. Wachter, Mr. Wright, Mr. Franzoni & Mr. Ryan.
Absent: Mr. Hoover.

Mr. Russell moved to approve the December 28, 2022, regular meeting minutes. Mrs. Klose seconded the motion. With a vote in the affirmative, the minutes were approved.

Roll call reflected the following in the affirmative: Mr. Hodgson, Mr. Mannherz, Mrs. Klose, Mr. Russell, Mr. Savianeso, Mr. Wachter, Mr. Franzoni & Mr. Ryan. Abstained: Mr. Hartney & Mr. Wright. Absent: Mr. Hoover.

Mrs. Klose moved to approve Resolution 2023-09. Mr. Russell seconded the motion. With a vote in the affirmative, the following was approved.

Robert Rue, Esq. was present to represent Three I & F of 1616 N. Long Beach Boulevard, Block 43, Lot 22 for preliminary and final site plan approval. There was discussion in regards to the original window and when the window was replaced. It was mentioned that the window was replaced with the current at the start of the Covid 19 pandemic.

Sharon Ingram was sworn in as one of the owners. It was stated that during the pandemic, the applicant was unable to get an application to replace the window with a takeout window. The window that was replaced was done so without a permit. The original window was replaced with one window with two solid panels that are fixed on the inside and two solid panels that open on the outside. the two outer panels slide in to open.

There was discussion about the size of the window. The ordinance states that a takeout window can be no more than 16 sq. feet and can only be one single window. It was mentioned that a variance would be needed for the two openings in the single window. Mr. Hodgson made a motion to interpret the Borough ordinance that one continuous opening is one window, not more than one opening. Mrs. Klose seconded the motion. The vote reflected the following ayes: Mr. Hartney, Mr. Hodgson, Mr. Mannherz, Mrs. Klose, Mr. Russell, Mr. Savianeso, Mr. Wachter, Mr. Wright & Mr. Franzoni. Absent: Mr. Hoover.

Brian Ingram was sworn in as one of the owners. He stated that there would be 4 or 5 employees and that would not change with the use of the takeout window. He also mentioned that there will be garbage and recycling cans in front of the building for patrons. Delivery trucks will continue to park in the alley behind the store. No additional parking spaces will be needed.

Mrs. Klose moved to open public comment. Mr. Russell seconded the motion. With a vote in the affirmative, public comment was open. The vote reflected the following ayes: Mr. Hartney, Mr. Hodgson, Mr. Mannherz, Mrs. Klose, Mr. Russell, Mr. Savianeso, Mr. Wachter, Mr. Wright & Mr. Franzoni. Absent: Mr. Hoover. Mrs. Klose moved to close public comment. Mr. Mannherz seconded the motion. With a vote in the affirmative, public comment was open. The vote reflected the following ayes: The vote reflected the following ayes: Mr. Hartney, Mr. Hodgson, Mr. Mannherz, Mrs. Klose, Mr. Russell, Mr. Savianeso, Mr. Wachter, Mr. Wright & Mr. Franzoni. Absent: Mr. Hoover.

Mr. Wright moved to approve the application. Mr. Wachter seconded the motion. Roll call reflected the following votes:

Mr. Hartney: No, for two reasons. First, the testimony given by the applicant stating that they were unable to contact Borough Hall is, in my opinion, not the case, they did not email. it brings

to mind a matter of process of going and doing something and then asking permission for it. It goes against case law, that we are not here to correct omissions and errors. Also, on the other matter that the ordinance is clear, the opening is one opening. The takeout window is for one window and this is for two. It would start a slippery slope down the definition of takeout window and I think the Governing Body was clear in their definition of what a takeout window is. It is clear in the definition of how many.

Mr. Hodgson: I will also vote no. I agree with what Mr. Hartney said. It is a matter of process. I appreciate that Covid was tough for everybody, but that does not give the owners or homeowners carte blanche to do work without permits. Additionally, and more importantly, I agree with Mr. Hartney that the ordinance is clear, that it is one opening. For that, I vote no.

Mrs. Klose: I'm going to vote yes. I think it satisfies the C2 criteria. It is not the only bagel place in town. They have competition down the street. I like to see businesses staying in Surf City. I've been there, I've ordered there. I think the in-and-out is going to be just fine. I'm voting yes.

Mr. Mannherz: I vote yes. I agree with Mrs. Klose that the C2 variance items have been satisfied. Testimony has been given that the two openings used will not substantially impact or be detrimental to traffic on the sidewalk. I know that it has been stated that the Borough Ordinance says "an opening" each application stands on its own merits and I think in this case there has been testimony to indicate that this is more efficient to this particular business to operate.

Mr. Russell: I vote no also. I do because what Mr. Hodgson and Mr. Hartney said rang true. There are other ways to make that window work without having two openings. I think that a little more investigation will make this work rather than having the two.

Mr. Savianeso: I'm going to have to vote no, because the window was put in without approval, it could have been easily been changed out to one opening. I know it works well, but you can't go against the ordinance. I'm going to vote no.

Mr. Wachter: I'm going to vote yes, mainly because it is set up for the next pandemic. You can separate more easily that way.

Mr. Wright: I vote yes. Going back to Covid, I think we are all trying to forget about this, the bad experiences. What transpired, I know it was hard to figure out what would be open, the island was good, but not at its best. I've been in the business in summertime and it was chaotic. There were so many people in there and they're all jammed up and that is because they are trying to pay for the food and get them at the same time. With the two windows, it is the smoothest function I can see, you pay at one window and pick up at different window. I vote yes and I definitely think it's a good move.

Mr. Franzoni: I have mixed emotions and frankly it would be more efficient to have two windows there, but it's definitely an issue with me that the window there, they're one window

ahead of the game without getting permission to put it there. It doesn't feel right to go to the next step when you have taken one without an approval. I have to say no for that reason.

Mr. Russell moved to approve the bills. Mrs. Klose seconded the motion. Roll call reflected the following in favor: Mr. Hartney, Mr. Hodgson, Mr. Mannherz, Mrs. Klose, Mr. Russell, Mr. Savianeso, Mr. Wachter, Mr. Wright, Mr. Franzoni & Mr. Ryan. Absent: Mr. Hoover.

John Guasz at 3rd Street had a question about the election of the chair and vice chair.

Mr. Russell moved to adjourn the meeting. Mrs. Klose seconded the motion. With a vote in the affirmative, the meeting was adjourned. Roll call reflected the following in favor: Mr. Hartney, Mr. Hodgson, Mr. Mannherz, Mrs. Klose, Mr. Russell, Mr. Savianeso, Mr. Wachter, Mr. Wright, Mr. Franzoni & Mr. Ryan. Absent: Mr. Hoover.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jenna Letts".

Jenna Letts

Land Use Board Clerk